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General Laws, Amendments to the Codes, Resolutions,
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California Legislature

2003–04 Regular Session
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CHAPTER 749

An act to amend Section 12670.14 of the Water Code, relating to water.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 24, 2004.]

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

SECTION 1. Section 12670.14 of the Water Code is amended to read:

12670.14. The following projects in areas within the City of Sacramento and the Counties of Sacramento and Sutter are adopted and authorized at an estimated cost to the state of the sum that may be appropriated by the Legislature for state participation upon the recommendation and advice of the department or the Reclamation Board:

(a) The project for flood control in the Natomas and North Sacramento areas adopted and authorized by Congress in Section 9159 of the Department of Defense Appropriations Act of 1993 (P.L. 102-396) substantially in accordance with the recommendations of the Chief of Engineers in the report entitled ''American River Watershed Investigation'' dated July 1, 1992.

(b) The project for flood control along the American and Sacramento Rivers adopted and authorized by Congress in Section 101(a)(1) of the Water Resources Development Act of 1996 substantially in accordance with the recommendations of the Chief of Engineers in the report entitled ''American River Watershed Project, California'' dated June 27, 1996, as modified by Congress in Section 366 of the Water Resources Development Act of 1999.

(c) The project to modify Folsom Dam adopted and authorized by Congress in Section 101(a)(6) of the Water Resources Development Act of 1999, as described in the United States Army Corps of Engineers Supplemental Information Report for the American River Watershed Project, California, dated March 1996, as modified by the report entitled ''Folsom Dam Modification Report, New Outlets Plan,'' dated March 1998, prepared by the Sacramento Area Flood Control Agency.

(d) (1) The project for flood control, environmental restoration, and recreation along south Sacramento County streams adopted and authorized by Congress in Section 101(a)(7) of the Water Resources Development Act of 1999 as described in the report of the Chief of Engineers entitled ''South Sacramento County Streams, California'' dated October 6, 1998.

(2) Notwithstanding Section 12657, at the discretion of the Reclamation Board, the Sacramento Area Flood Control Agency may provide, for the project described in paragraph (1), the assurances of local cooperation satisfactory to the Secretary of the Army, in accordance with Section 12657, in lieu of assurances by the Reclamation Board.

CHAPTER 750

An act to amend Sections 6276.08 and 6276.22 of the Government Code, and to amend Sections 123853 and 125191 of the Health and Safety Code, relating to genetic diseases, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 24, 2004.]

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

SECTION 1. Section 6276.08 of the Government Code is amended to read:

6276.08. Cable television subscriber information, confidentiality of, Section 637.5, Penal Code.

California AIDS Program, personal data, confidentiality, Section 120820, Health and Safety Code.

California Apple Commission, confidentiality of lists of persons, Section 75598, Food and Agricultural Code.

California Apple Commission, confidentiality of proprietary information from producers or handlers, Section 75633, Food and Agricultural Code.

California Asparagus Commission, confidentiality of lists of producers, Section 78262, Food and Agricultural Code.

California Asparagus Commission, confidentiality of proprietary information from producers, Section 78288, Food and Agricultural Code.

California Avocado Commission, confidentiality of information from handlers, Section 67094, Food and Agricultural Code.

California Avocado Commission, confidentiality of proprietary information from handlers, Section 67104, Food and Agricultural Code.

California Cherry Commission, confidentiality of proprietary information from producers, processors, shippers, or grower-handlers, Section 76144, Food and Agricultural Code.

California Children's Services Program, confidentiality of factor replacement therapy contracts, Section 123853, Health and Safety Code.

California Cut Flower Commission, confidentiality of lists of producers, Section 77963, Food and Agricultural Code.

California Cut Flower Commission, confidentiality of proprietary information from producers, Section 77988, Food and Agricultural Code.

California Date Commission, confidentiality of proprietary information from producers and grower-handlers, Section 77843, Food and Agricultural Code.

California Egg Commission, confidentiality of proprietary information from handlers or distributors, Section 75134, Food and Agricultural Code.

California Forest Products Commission, confidentiality of lists of persons, Section 77589, Food and Agricultural Code.

California Forest Products Commission, confidentiality of proprietary information from producers, Section 77624, Food and Agricultural Code.

California Iceberg Lettuce Commission, confidentiality of information from handlers, Section 66624, Food and Agricultural Code.

California Kiwifruit Commission, confidentiality of proprietary information from producers or handlers, Section 68104, Food and Agricultural Code.

California Navel Orange Commission, confidentiality of proprietary information from producers or handlers and lists of producers and handlers, Section 73257, Food and Agricultural Code.

California Pepper Commission, confidentiality of lists of producers and handlers, Section 77298, Food and Agricultural Code.

California Pepper Commission, confidentiality of proprietary information from producers or handlers, Section 77334, Food and Agricultural Code.

California Pistachio Commission, confidentiality of proprietary information from producers or processors, Section 69045, Food and Agricultural Code.

California Salmon Commission, confidentiality of fee transactions records, Section 76901.5, Food and Agricultural Code.

California Salmon Commission, confidentiality of request for list of commercial salmon vessel operators, Section 76950, Food and Agricultural Code.

California Seafood Council, confidentiality of fee transaction records, Section 78553, Food and Agricultural Code.

California Seafood Council, confidentiality of information on volume of fish landed, Section 78575, Food and Agricultural Code.

California Sheep Commission, confidentiality of proprietary information from producers or handlers and lists of producers, Section 76343, Food and Agricultural Code.

California State University contract law, bids, questionnaires and financial statements, Section 10763, Public Contract Code.

California Table Grape Commission, confidentiality of information from shippers, Section 65603, Food and Agricultural Code.

California Tomato Commission, confidentiality of lists of producers, handlers, and others, Section 78679, Food and Agricultural Code.

California Tomato Commission, confidentiality of proprietary information, Section 78704, Food and Agricultural Code.

California Walnut Commission, confidentiality of lists of producers, Section 77101, Food and Agricultural Code.

California Walnut Commission, confidentiality of proprietary information from producers or handlers, Section 77154, Food and Agricultural Code.

California Wheat Commission, confidentiality of proprietary information from handlers and lists of producers, Section 72104, Food and Agricultural Code.

California Wheat Commission, confidentiality of requests for assessment refund, Section 72109, Food and Agricultural Code.

California Wine Commission, confidentiality of proprietary information from producers or vintners, Section 74655, Food and Agricultural Code.

California Wine Grape Commission, confidentiality of proprietary information from producers and vintners, Section 74955, Food and Agricultural Code.

SEC. 2. Section 6276.22 of the Government Code is amended to read:

6276.22. Genetic test results in medical record of applicant or enrollee of specified insurance plans, Sections 10123.35 and 10140.1, Insurance Code.

Genetically Handicapped Person's Program, confidentiality of factor replacement therapy contracts, Section 125191, Health and Safety Code.

Governor, correspondence of and to Governor and Governor's office, subdivision (*l*), Section 6254, Government Code.

Governor, transfer of public records in control of, restrictions on public access, Section 6268, Government Code.

Grand juror, disclosure of information or indictment, Section 924, Penal Code.

Grand jury, confidentiality of request for special counsel, Section 936.7, Penal Code.

Grand jury, confidentiality of transcription of indictment or accusation, Section 938.1, Penal Code.

Group Insurance, public employees, Section 53202.25, Government Code.

Guardian, confidentiality of report used to check ability, Section 2342, Probate Code.

Guardianship, confidentiality of report regarding the suitability of the proposed guardian, Section 1543, Probate Code.

Guardianship, disclosure of report and recommendation concerning proposed guardianship of person or estate, Section 1513, Probate Code.

SEC. 3. Section 123853 of the Health and Safety Code is amended to read:

123853. (a) The department may enter into contracts with one or more manufacturers on a negotiated or bid basis as the purchaser, but not the dispenser or distributor, of factor replacement therapies under the California Children's Services Program for the purpose of enabling the department to obtain the full range of available therapies and services required for clients with hematological disorders at the most favorable price and to enable the department, notwithstanding any other provision of state law, to obtain discounts, rebates, or refunds from the manufacturers based upon the large quantities purchased under the program. Nothing in this subdivision shall interfere with the usual and customary distribution practices of factor replacement therapies. In order to achieve maximum cost savings, the Legislature hereby determines that an expedited contract process under this section is necessary. Therefore, a contract under this subdivision may be on a negotiated basis and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code and Chapter 6 (commencing with Section 14825) of Part 5.5 of Division 3 of the Government Code. Contracts entered pursuant to this subdivision shall be confidential and shall be exempt from 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) Factor replacement therapy manufacturers shall calculate and pay interest on late or unpaid rebates. The interest shall not apply to any prior period adjustments of unit rebate amounts or department utilization adjustments. Manufacturers shall calculate and pay interest on late or unpaid rebates for quarters that begin on or after the effective date of the act that added this subdivision.

(2) Following the final resolution of any dispute regarding the amount of a rebate, any underpayment by a manufacturer shall be paid with interest calculated pursuant to paragraph (4), and any overpayment, together with interest at the rate calculated pursuant to paragraph (4), shall be credited by the department against future rebates due.

(3) Interest pursuant to paragraphs (1) and (2) shall begin accruing 38 calendar days from the date of mailing the invoice, including supporting

utilization data sent to the manufacturer. Interest shall continue to accrue until the date of mailing of the manufacturer's payment.

(4) Interest rates and calculations pursuant to paragraphs (1) and (2) shall be identical to interest rates and calculations set forth in the federal Centers for Medicare and Medicaid Services' Medicaid Drug Rebate Program Releases or regulations.

(b) If the department has not received a rebate payment, including interest, within 180 days of the date of mailing of the invoice, including supporting utilization data, a factor replacement therapy manufacturer's contract with the department shall be deemed to be in default and the contract may be terminated in accordance with the terms of the contract. This subdivision does not limit the department's right to otherwise terminate a contract in accordance with the terms of that contract.

(c) The department may enter into contracts on a bid or negotiated basis with manufacturers, distributors, dispensers, or suppliers of pharmaceuticals, appliances, durable medical equipment, medical supplies, and other product-type health care services and laboratories for the purpose of obtaining the most favorable prices to the state and to assure adequate access and quality of the product or service. In order to achieve maximum cost savings, the Legislature hereby determines that an expedited contract process under this subdivision is necessary. Therefore, contracts under this subdivision may be on a negotiated basis and shall be exempt from the provisions of Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code and Chapter 6 (commencing with Section 14825), Part 5.5, Division 3 of the Government Code. This subdivision shall not apply to pharmacies or suppliers that provide blood, blood derivatives, or blood factor products, or any product or service provided by those pharmacies or suppliers.

(d) The department may contract with one or more manufacturers of each multisource prescribed product or supplier of outpatient clinical laboratory services on a bid or negotiated basis. Contracts for outpatient clinical laboratory services shall require that the contractor be a clinical laboratory licensed or certified by the State of California or certified under Section 263a of Title 42 of the United States Code. Nothing in this subdivision shall be construed as prohibiting the department from contracting with less than all manufacturers or clinical laboratories, including just one manufacturer or clinical laboratory, on a bid or negotiated basis.

SEC. 4. Section 125191 of the Health and Safety Code is amended to read:

125191. (a) The department may enter into contracts with one or more manufacturers on a negotiated or bid basis as the purchaser, but not the dispenser or distributor, of factor replacement therapies under the Genetically Handicapped Person's Program for the purpose of enabling

the department to obtain the full range of available therapies and services required for clients with hematological disorders at the most favorable price and to enable the department, notwithstanding any other provision of state law, to obtain discounts, rebates, or refunds from the manufacturers based upon the large quantities purchased under the program. Nothing in this subdivision shall interfere with the usual and customary distribution practices of factor replacement therapies. In order to achieve maximum cost savings, the Legislature hereby determines that an expedited contract process under this section is necessary. Therefore, a contract under this subdivision may be entered into on a negotiated basis and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code and Chapter 6 (commencing with Section 14825) of Part 5.5 of Division 3 of the Government Code. Contracts entered pursuant to this subdivision shall be confidential and shall be exempt from 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) Factor replacement therapy manufacturers shall calculate and pay interest on late or unpaid rebates. The interest shall not apply to any prior period adjustments of unit rebate amounts or department utilization adjustments. Manufacturers shall calculate and pay interest on late or unpaid rebates for quarters that begin on or after the effective date of the act that added this subdivision.

(2) Following the final resolution of any dispute regarding the amount of a rebate, any underpayment by a manufacturer shall be paid with interest calculated pursuant to paragraph (4), and any overpayment, together with interest at the rate calculated pursuant to paragraph (4), shall be credited by the department against future rebates due.

(3) Interest pursuant to paragraphs (1) and (2) shall begin accruing 38 calendar days from the date of mailing the invoice, including supporting utilization data sent to the manufacturer. Interest shall continue to accrue until the date of mailing of the manufacturer's payment.

(4) Interest rates and calculations pursuant to paragraphs (1) and (2) shall be identical to interest rates and calculations set forth in the federal Centers for Medicare and Medicaid Services' Medicaid Drug Rebate Program Releases or regulations.

(b) If the department has not received a rebate payment, including interest, within 180 days of the date of mailing of the invoice, including supporting utilization data, a factor replacement therapy manufacturer's contract with the department shall be deemed to be in default and the contract may be terminated in accordance with the terms of the contract. This subdivision does not limit the department's right to otherwise terminate a contract in accordance with the terms of that contract.

(c) The department may enter into contracts on a bid or negotiated basis with manufacturers, distributors, dispensers, or suppliers of pharmaceuticals, appliances, durable medical equipment, medical supplies, and other product-type health care services and laboratories for the purpose of obtaining the most favorable prices to the state and to assure adequate access and quality of the product or service. In order to achieve maximum cost savings, the Legislature hereby determines that an expedited contract process under this subdivision is necessary. Therefore, contracts under this subdivision may be entered into on a negotiated basis and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code and Chapter 6 (commencing with Section 14825) of Part 5.5 of Division 3 of the Government Code. This subdivision shall not apply to pharmacies or suppliers that provide blood, blood derivatives, or blood factor products, or any product or service provided by those pharmacies or suppliers.

(d) The department may contract with one or more manufacturers of each multisource prescribed product or supplier of outpatient clinical laboratory services on a bid or negotiated basis. Contracts for outpatient clinical laboratory services shall require that the contractor be a clinical laboratory licensed or certified by the State of California or certified under Section 263a of Title 42 of the United States Code. Nothing in this subdivision shall be construed as prohibiting the department from contracting with less than all manufacturers or clinical laboratories, including just one manufacturer or clinical laboratory, on a bid or negotiated basis.

SEC. 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 facilitate contract negotiations for provision of services under the Genetically Handicapped Person's Program, thus allowing the state to realize rebate savings on these contracts at the earliest possible time, it is necessary for this act to take effect immediately.

CHAPTER 751

An act to amend Section 502.01 of the Penal Code, relating to child pornography.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 24, 2004.]

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

SECTION 1. Section 502.01 of the Penal Code is amended to read:

502.01. (a) As used in this section:

(1) ''Property subject to forfeiture'' means any property of the defendant that is illegal telecommunications equipment as defined in subdivision (g) of Section 502.8, or a computer, computer system, or computer network, and any software or data residing thereon, if the telecommunications device, computer, computer system, or computer network was used in committing a violation of, or conspiracy to commit a violation of, Section 288, 288.2, 311.1, 311.2, 311.3, 311.4, 311.5, 311.10, 311.11, 422, 470, 470a, 472, 475, 476, 480, 483.5, 484g, or subdivision (a), (b), or (d) of Section 484e, subdivision (a) of Section 484f, subdivision (b) or (c) of Section 484i, subdivision (c) of Section 502, or Section 502.7, 502.8, 529, 529a, or 530.5, 537e, 593d, 593e, or 646.9, or was used as a repository for the storage of software or data obtained in violation of those provisions. Forfeiture shall not be available for any property used solely in the commission of an infraction. If the defendant is a minor, it also includes property of the parent or guardian of the defendant.

(2) ''Sentencing court'' means the court sentencing a person found guilty of violating or conspiring to commit a violation of Section 288, 288.2, 311.1, 311.2, 311.3, 311.4, 311.5, 311.10, 311.11, 422, 470, 470a, 472, 475, 476, 480, 483.5, 484g, or subdivision (a), (b), or (d) of Section 484e, subdivision (d) of Section 484e, subdivision (a) of Section 484f, subdivision (b) or (c) of Section 484i, subdivision (c) of Section 502, or Section 502.7, 502.8, 529, 529a, 530.5, 537e, 593d, 593e, or 646.9, or, in the case of a minor, found to be a person described in Section 602 of the Welfare and Institutions Code because of a violation of those provisions, the juvenile court.

(3) ''Interest'' means any property interest in the property subject to forfeiture.

(4) ''Security interest'' means an interest that is a lien, mortgage, security interest, or interest under a conditional sales contract.

(5) ''Value'' has the following meanings:

(A) When counterfeit items of computer software are manufactured or possessed for sale, the ''value'' of those items shall be equivalent to the retail price or fair market price of the true items that are counterfeited.

(B) When counterfeited but unassembled components of computer software packages are recovered, including, but not limited to, counterfeited computer diskettes, instruction manuals, or licensing envelopes, the ''value'' of those components of computer software packages shall be equivalent to the retail price or fair market price of the

number of completed computer software packages that could have been made from those components.

(b) The sentencing court shall, upon petition by the prosecuting attorney, at any time following sentencing, or by agreement of all parties, at the time of sentencing, conduct a hearing to determine whether any property or property interest is subject to forfeiture under this section. At the forfeiture hearing, the prosecuting attorney shall have the burden of establishing, by a preponderance of the evidence, that the property or property interests are subject to forfeiture. The prosecuting attorney may retain seized property that may be subject to forfeiture until the sentencing hearing.

(c) Prior to the commencement of a forfeiture proceeding, the law enforcement agency seizing the property subject to forfeiture shall make an investigation as to any person other than the defendant who may have an interest in it. At least 30 days before the hearing to determine whether the property should be forfeited, the prosecuting agency shall send notice of the hearing to any person who may have an interest in the property that arose before the seizure.

A person claiming an interest in the property shall file a motion for the redemption of that interest at least 10 days before the hearing on forfeiture, and shall send a copy of the motion to the prosecuting agency and to the probation department.

If a motion to redeem an interest has been filed, the sentencing court shall hold a hearing to identify all persons who possess valid interests in the property. No person shall hold a valid interest in the property if, by a preponderance of the evidence, the prosecuting agency shows that the person knew or should have known that the property was being used in violation of, or conspiracy to commit a violation of, Section 288, 288.2, 311.1, 311.2, 311.3, 311.4, 311.5, 311.10, 311.11, 470, 470a, 472, 475, 476, 480, 483.5, 484g, or subdivision (a), (b), or (d) of Section 484e, subdivision (a) of Section 484f, subdivision (b) or (c) of Section 484i, subdivision (c) of Section 502, or Section 502.7, 502.8, 529, 529a, 530.5, 537e, 593d, 593e, or 646.9, and that the person did not take reasonable steps to prevent that use, or if the interest is a security interest, the person knew or should have known at the time that the security interest was created that the property would be used for a violation.

(d) If the sentencing court finds that a person holds a valid interest in the property, the following provisions shall apply:

(1) The court shall determine the value of the property.

(2) The court shall determine the value of each valid interest in the property.

(3) If the value of the property is greater than the value of the interest, the holder of the interest shall be entitled to ownership of the property

upon paying the court the difference between the value of the property and the value of the valid interest.

If the holder of the interest declines to pay the amount determined under paragraph (2), the court may order the property sold and designate the prosecutor or any other agency to sell the property. The designated agency shall be entitled to seize the property and the holder of the interest shall forward any documentation underlying the interest, including any ownership certificates for that property, to the designated agency. The designated agency shall sell the property and pay the owner of the interest the proceeds, up to the value of that interest.

(4) If the value of the property is less than the value of the interest, the designated agency shall sell the property and pay the owner of the interest the proceeds, up to the value of that interest.

(e) If the defendant was a minor at the time of the offense, this subdivision shall apply to property subject to forfeiture that is the property of the parent or guardian of the minor.

(1) The prosecuting agency shall notify the parent or guardian of the forfeiture hearing at least 30 days before the date set for the hearing.

(2) The computer or telecommunications device shall not be subject to forfeiture if the parent or guardian files a signed statement with the court at least 10 days before the date set for the hearing that the minor shall not have access to any computer or telecommunications device owned by the parent or guardian for two years after the date on which the minor is sentenced.

(3) If the minor is convicted of a violation of Section 288, 288.2, 311.1, 311.2, 311.3, 311.4, 311.5, 311.10, 311.11, 470, 470a, 472, 476, 480, or subdivision (b) of Section 484e, subdivision (d) of Section 484e, subdivision (a) of Section 484f, subdivision (b) of Section 484i, subdivision (c) of Section 502, or Section 502.7, 502.8, 529, 529a, or 530.5, within two years after the date on which the minor is sentenced, and the violation involves a computer or telecommunications device owned by the parent or guardian, the original property subject to forfeiture, and the property involved in the new offense, shall be subject to forfeiture notwithstanding paragraph (2).

(4) Notwithstanding paragraph (1), (2), or (3), or any other provision of this chapter, if a minor's parent or guardian makes full restitution to the victim of a crime enumerated in this chapter in an amount or manner determined by the court, the forfeiture provisions of this chapter do not apply to the property of that parent or guardian if the property was located in the family's primary residence during the commission of the crime.

(f) Notwithstanding any other provision of this chapter, the court may exercise its discretion to deny forfeiture where the court finds that the convicted defendant, or minor adjudicated to come within the

jurisdiction of the juvenile court, is not likely to use the property otherwise subject to forfeiture for future illegal acts.

(g) If the defendant is found to have the only valid interest in the property subject to forfeiture, it shall be distributed as follows:

(1) First, to the victim, if the victim elects to take the property as full or partial restitution for injury, victim expenditures, or compensatory damages, as defined in paragraph (1) of subdivision (e) of Section 502. If the victim elects to receive the property under this paragraph, the value of the property shall be determined by the court and that amount shall be credited against the restitution owed by the defendant. The victim shall not be penalized for electing not to accept the forfeited property in lieu of full or partial restitution.

(2) Second, at the discretion of the court, to one or more of the following agencies or entities:

(A) The prosecuting agency.

(B) The public entity of which the prosecuting agency is a part.

(C) The public entity whose officers or employees conducted the investigation resulting in forfeiture.

(D) Other state and local public entities, including school districts.

(E) Nonprofit charitable organizations.

(h) If the property is to be sold, the court may designate the prosecuting agency or any other agency to sell the property at auction. The proceeds of the sale shall be distributed by the court as follows:

(1) To the bona fide or innocent purchaser or encumbrancer, conditional sales vendor, or mortgagee of the property up to the amount of his or her interest in the property, if the court orders a distribution to that person.

(2) The balance, if any, to be retained by the court, subject to the provisions for distribution under subdivision (g).

CHAPTER 752

An act to amend Section 12024.2 of the Business and Professions Code, relating to prices.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 24, 2004.]

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

SECTION 1. The Legislature finds and declares the following:

The Legislature intends that stores always charge the lowest posted price for all items and that stores shall not rely on purported effective dates to avoid compliance with that rule.

SEC. 2. Section 12024.2 of the Business and Professions Code is amended to read:

12024.2. (a) It is unlawful for any person, at the time of sale of a commodity, to do any of the following:

(1) Charge an amount greater than the price, or to compute an amount greater than a true extension of a price per unit, that is then advertised, posted, marked, displayed, or quoted for that commodity.

(2) Charge an amount greater than the lowest price posted on the commodity itself or on a shelf tag that corresponds to the commodity, notwithstanding any limitation of the time period for which the posted price is in effect.

(b) A violation of this section is a misdemeanor punishable by a fine of not less than twenty-five dollars ($25) nor more than one thousand dollars ($1,000), by imprisonment in the county jail for a period not exceeding one year, or by both, if the violation is willful or grossly negligent, or when the overcharge is more than one dollar ($1).

(c) A violation of this section is an infraction punishable by a fine of not more than one hundred dollars ($100) when the overcharge is one dollar ($1) or less.

(d) As used in subdivisions (b) and (c), ''overcharge'' means the amount by which the charge for a commodity exceeds a price that is advertised, posted, marked, displayed, or quoted to that consumer for that commodity at the time of sale.

(e) Except as provided in subdivision (f), for purposes of this section, when more than one price for the same commodity is advertised, posted, marked, displayed, or quoted, the person offering the commodity for sale shall charge the lowest of those prices.

(f) Pricing may be subject to a condition of sale, such as membership in a retailer-sponsored club, the purchase of a minimum quantity, or the purchase of multiples of the same item, provided that the condition is conspicuously posted in the same location as the price.

SEC. 3. 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 may be given effect without the invalid provision or application.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because 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 753

An act to amend Section 2891.1 of the Public Utilities Code, relating to telecommunications.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 24, 2004.]

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

SECTION 1. Section 2891.1 of the Public Utilities Code is amended to read:

2891.1. (a) Notwithstanding Section 2891, a telephone corporation selling or licensing lists of residential subscribers shall not include the telephone number of any subscriber assigned an unlisted or unpublished access number. A subscriber may waive all or part of the protection provided by this subdivision through written notice to the telephone corporation.

(b) Notwithstanding Section 2891, a provider of mobile telephony services, or any direct or indirect affiliate or agent of a provider, providing the name and dialing number of a subscriber for inclusion in any directory of any form, or selling the contents of any directory database, or any portion or segment thereof, shall not include the dialing number of any subscriber without first obtaining the express consent of that subscriber. The provider's form for obtaining the subscriber's express consent shall meet all of the following requirements:

(1) It shall be a separate document that is not attached to any other document.

(2) It shall be signed and dated by the subscriber.

(3) It shall be unambiguous, legible, and conspicuously disclose that, by signing, the subscriber is consenting to have the subscriber's dialing number sold or licensed as part of a list of subscribers and the subscriber's dialing number may be included in a publicly available directory.

(4) If under the subscriber's calling plan the subscriber may be billed for receiving unsolicited calls or text messaging from a telemarketer, the provider's form shall include a disclosure, which shall be unambiguous, legible, and that by consenting to have the subscriber's dialing number sold or licensed as part of a list of subscribers or be included in a publicly

available directory, the subscriber may incur additional charges for receiving unsolicited calls or text messages.

(c) A subscriber who provides express prior consent pursuant to subdivision (b) may revoke that consent at any time. A provider of mobile telephony services shall comply with the subscriber's request to opt out within a reasonable period of time, not to exceed 60 days.

(d) A subscriber shall not be charged for making the choice to not be listed in a directory.

(e) This section does not apply to the provision of telephone numbers to the following parties for the purposes indicated:

(1) To a collection agency, to the extent disclosures made by the agency are supervised by the commission, exclusively for the collection of unpaid debts.

(2) (A) To any law enforcement agency, fire protection agency, public health agency, public environmental health agency, city or county emergency services planning agency, or private for-profit agency operating under contract with, and at the direction of, one or more of these agencies, for the exclusive purpose of responding to a 911 call or communicating an imminent threat to life or property.

(B) Any information or records provided to a private for-profit agency pursuant to this subdivision shall be held in confidence by that agency and by any individual employed by or associated with that agency. This information or these records shall not be open to examination for any purpose not directly connected with the administration of the services specified in subdivision (e) of Section 2872 or this paragraph.

(3) To a lawful process issued under state or federal law.

(4) To a telephone corporation providing service between service areas for the provision to the subscriber of telephone service between service areas, or to third parties for the limited purpose of providing billing services.

(5) To a telephone corporation to effectuate a customer's request to transfer the customer's assigned telephone number from the customer's existing provider of telecommunications services to a new provider of telecommunications services.

(6) To the commission pursuant to its jurisdiction and control over telephone and telegraph corporations.

(f) Every deliberate violation of this section is grounds for a civil suit by the aggrieved subscriber against the organization or corporation and its employees responsible for the violation.

(g) For purposes of this section, ''unpublished or unlisted access number'' means a telephone, telex, teletex, facsimile, computer modem, or any other code number that is assigned to a subscriber by a telephone or telegraph corporation for the receipt of communications initiated by

other telephone or telegraph customers and that the subscriber has requested that the telephone or telegraph corporation keep in confidence.

(h) No telephone corporation, nor any official or employee thereof, shall be subject to criminal or civil liability for the release of customer information as authorized by this section.

(i) The provisions of this section are severable. If any provision of this section or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application.

(j) For purposes of this section, ''mobile telephony services'' means commercially available interconnected mobile phone services that provide access to the public switched telephone network (PSTN) via mobile communication devices employing radio wave technology to transmit calls, including cellular radiotelephone, broadband Personal Communications Services (PCS), and digital Specialized Mobile Radio (SMR). ''Mobile telephony services'' does not include mobile satellite services or mobile data services used exclusively for the delivery of nonvoice information to a mobile device.

CHAPTER 754

An act to amend Sections 1354 and 1357.120 of, to amend and renumber Section 1368.4 of, and to add Article 5 (commencing with Section 1363.810) to Chapter 4 of, and Article 1 (commencing with Section 1368.3) and Article 2 (commencing with Section 1369.510) to Chapter 7 of, Title 6 of Part 4 of Division 2 of, the Civil Code, and to repeal Section 383 of the Code of Civil Procedure, relating to common interest developments.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 24, 2004.]

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

SECTION 1. Section 1354 of the Civil Code is amended to read:

1354. (a) The covenants and restrictions in the declaration shall be enforceable equitable servitudes, unless unreasonable, and shall inure to the benefit of and bind all owners of separate interests in the development. Unless the declaration states otherwise, these servitudes may be enforced by any owner of a separate interest or by the association, or by both.

(b) A governing document other than the declaration may be enforced by the association against an owner of a separate interest or by an owner of a separate interest against the association.

(c) In an action to enforce the governing documents, the prevailing party shall be awarded reasonable attorney's fees and costs.

SEC. 2. 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.

(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. 2.5. 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. 3. Article 5 (commencing with Section 1363.810) is added to Chapter 4 of Title 6 of Part 4 of Division 2 of the Civil Code, to read:

Article 5. Dispute Resolution Procedure

1363.810. (a) This article applies to a dispute between an association and a member involving their rights, duties, or liabilities under this title, under the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code), or under the governing documents of the common interest development or association.

(b) This article supplements, and does not replace, Article 2 (commencing with Section 1369.510) of Chapter 7, relating to alternative dispute resolution as a prerequisite to an enforcement action.

1363.820. (a) An association shall provide a fair, reasonable, and expeditious procedure for resolving a dispute within the scope of this article.

(b) In developing a procedure pursuant to this article, an association shall make maximum, reasonable use of available local dispute resolution programs involving a neutral third party, including low-cost mediation programs such as those listed on the Internet Web sites of the Department of Consumer Affairs and the United States Department of Housing and Urban Development.

(c) If an association does not provide a fair, reasonable, and expeditious procedure for resolving a dispute within the scope of this article, the procedure provided in Section 1363.840 applies and satisfies the requirement of subdivision (a).

1363.830. A fair, reasonable, and expeditious dispute resolution procedure shall at a minimum satisfy all of the following requirements:

(a) The procedure may be invoked by either party to the dispute. A request invoking the procedure shall be in writing.

(b) The procedure shall provide for prompt deadlines. The procedure shall state the maximum time for the association to act on a request invoking the procedure.

(c) If the procedure is invoked by a member, the association shall participate in the procedure.

(d) If the procedure is invoked by the association, the member may elect not to participate in the procedure. If the member participates but the dispute is resolved other than by agreement of the member, the member shall have a right of appeal to the association's board of directors.

(e) A resolution of a dispute pursuant to the procedure, that is not in conflict with the law or the governing documents, binds the association and is judicially enforceable. An agreement reached pursuant to the procedure, that is not in conflict with the law or the governing documents, binds the parties and is judicially enforceable.

(f) The procedure shall provide a means by which the member and the association may explain their positions.

(g) A member of the association shall not be charged a fee to participate in the process.

1363.840. (a) This section applies in an association that does not otherwise provide a fair, reasonable, and expeditious dispute resolution procedure. The procedure provided in this section is fair, reasonable, and expeditious, within the meaning of this article.

(b) Either party to a dispute within the scope of this article may invoke the following procedure:

(1) The party may request the other party to meet and confer in an effort to resolve the dispute. The request shall be in writing.

(2) A member of an association may refuse a request to meet and confer. The association may not refuse a request to meet and confer.

(3) The association's board of directors shall designate a member of the board to meet and confer.

(4) The parties shall meet promptly at a mutually convenient time and place, explain their positions to each other, and confer in good faith in an effort to resolve the dispute.

(5) A resolution of the dispute agreed to by the parties shall be memorialized in writing and signed by the parties, including the board designee on behalf of the association.

(c) An agreement reached under this section binds the parties and is judicially enforceable if both of the following conditions are satisfied:

(1) The agreement is not in conflict with law or the governing documents of the common interest development or association.

(2) The agreement is either consistent with the authority granted by the board of directors to its designee or the agreement is ratified by the board of directors.

(d) A member of the association may not be charged a fee to participate in the process.

1363.850. The notice provided pursuant to Section 1369.590 shall include a description of the internal dispute resolution process provided pursuant to this article.

SEC. 4. Article 1 (commencing with Section 1368.3) is added to Chapter 7 of Title 6 of Part 4 of Division 2 of the Civil Code, to read:

Article 1. Miscellaneous Provisions

1368.3. An association established to manage a common interest development has standing to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as the real party in interest and without joining with it the individual owners of the common interest development, in matters pertaining to the following:

(a) Enforcement of the governing documents.

(b) Damage to the common area.

(c) Damage to a separate interest that the association is obligated to maintain or repair.

(d) Damage to a separate interest that arises out of, or is integrally related to, damage to the common area or a separate interest that the association is obligated to maintain or repair.

1368.4. (a) In an action maintained by an association pursuant to subdivision (b), (c), or (d) of Section 1368.3, the amount of damages recovered by the association shall be reduced by the amount of damages allocated to the association or its managing agents in direct proportion to their percentage of fault based upon principles of comparative fault. The comparative fault of the association or its managing agents may be raised by way of defense, but shall not be the basis for a cross-action or separate action against the association or its managing agents for contribution or implied indemnity, where the only damage was sustained by the association or its members. It is the intent of the Legislature in enacting this subdivision to require that comparative fault be pleaded as an affirmative defense, rather than a separate cause of action, where the only damage was sustained by the association or its members.

(b) In an action involving damages described in subdivision (b), (c), or (d) of Section 1368.3, the defendant or cross-defendant may allege and prove the comparative fault of the association or its managing agents as a setoff to the liability of the defendant or cross-defendant even if the association is not a party to the litigation or is no longer a party whether by reason of settlement, dismissal, or otherwise.

(c) Subdivisions (a) and (b) apply to actions commenced on or after January 1, 1993.

(d) Nothing in this section affects a person's liability under Section 1431, or the liability of the association or its managing agent for an act or omission which causes damages to another.

SEC. 5. Section 1368.4 of the Civil Code is amended and renumbered to read:

1368.5. (a) Not later than 30 days prior to the filing of any civil action by the association against the declarant or other developer of a common interest development for alleged damage to the common areas, alleged damage to the separate interests that the association is obligated to maintain or repair, or alleged damage to the separate interests that arises out of, or is integrally related to, damage to the common areas or separate interests that the association is obligated to maintain or repair, the board of directors of the association shall provide a written notice to each member of the association who appears on the records of the association when the notice is provided. This notice shall specify all of the following:

(1) That a meeting will take place to discuss problems that may lead to the filing of a civil action.

(2) The options, including civil actions, that are available to address the problems.

(3) The time and place of this meeting.

(b) Notwithstanding subdivision (a), if the association has reason to believe that the applicable statute of limitations will expire before the association files the civil action, the association may give the notice, as described above, within 30 days after the filing of the action.

SEC. 6. Article 2 (commencing with Section 1369.510) is added to Chapter 7 of Title 6 of Part 4 of Division 2 of the Civil Code, to read:

Article 2. Alternative Dispute Resolution

1369.510. As used in this article:

(a) ''Alternative dispute resolution'' means mediation, arbitration, conciliation, or other nonjudicial procedure that involves a neutral party in the decisionmaking process. The form of alternative dispute resolution chosen pursuant to this article may be binding or nonbinding, with the voluntary consent of the parties.

(b) ''Enforcement action'' means a civil action or proceeding, other than a cross-complaint, for any of the following purposes:

(1) Enforcement of this title.

(2) Enforcement of the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code).

(3) Enforcement of the governing documents of a common interest development.

1369.520. (a) An association or an owner or a member of a common interest development may not file an enforcement action in the superior court unless the parties have endeavored to submit their dispute to alternative dispute resolution pursuant to this article.

(b) This section applies only to an enforcement action that is solely for declaratory, injunctive, or writ relief, or for that relief in conjunction with a claim for monetary damages not in excess of five thousand dollars ($5,000).

(c) This section does not apply to a small claims action.

(d) Except as otherwise provided by law, this section does not apply to an assessment dispute.

1369.530. (a) Any party to a dispute may initiate the process required by Section 1369.520 by serving on all other parties to the dispute a Request for Resolution. The Request for Resolution shall include all of the following:

(1) A brief description of the dispute between the parties.

(2) A request for alternative dispute resolution.

(3) A notice that the party receiving the Request for Resolution is required to respond within 30 days of receipt or the request will be deemed rejected.

(4) If the party on whom the request is served is the owner of a separate interest, a copy of this article.

(b) Service of the Request for Resolution shall be by personal delivery, first-class mail, express mail, facsimile transmission, or other means reasonably calculated to provide the party on whom the request is served actual notice of the request.

(c) A party on whom a Request for Resolution is served has 30 days following service to accept or reject the request. If a party does not accept the request within that period, the request is deemed rejected by the party.

1369.540. (a) If the party on whom a Request for Resolution is served accepts the request, the parties shall complete the alternative dispute resolution within 90 days after the party initiating the request receives the acceptance, unless this period is extended by written stipulation signed by both parties.

(b) Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code applies to any form of alternative dispute resolution initiated by a Request for Resolution under this article, other than arbitration.

(c) The costs of the alternative dispute resolution shall be borne by the parties.

1369.550. If a Request for Resolution is served before the end of the applicable time limitation for commencing an enforcement action, the time limitation is tolled during the following periods:

(a) The period provided in Section 1369.530 for response to a Request for Resolution.

(b) If the Request for Resolution is accepted, the period provided by Section 1369.540 for completion of alternative dispute resolution,

including any extension of time stipulated to by the parties pursuant to Section 1369.540.

1369.560. (a) At the time of commencement of an enforcement action, the party commencing the action shall file with the initial pleading a certificate stating that one or more of the following conditions is satisfied:

(1) Alternative dispute resolution has been completed in compliance with this article.

(2) One of the other parties to the dispute did not accept the terms offered for alternative dispute resolution.

(3) Preliminary or temporary injunctive relief is necessary.

(b) Failure to file a certificate pursuant to subdivision (a) is grounds for a demurrer or a motion to strike unless the court finds that dismissal of the action for failure to comply with this article would result in substantial prejudice to one of the parties.

1369.570. (a) After an enforcement action is commenced, on written stipulation of the parties, the matter may be referred to alternative dispute resolution. The referred action is stayed. During the stay, the action is not subject to the rules implementing subdivision (c) of Section 68603 of the Government Code.

(b) The costs of the alternative dispute resolution shall be borne by the parties.

1369.580. In an enforcement action in which fees and costs may be awarded pursuant to subdivision (c) of Section 1354, the court, in determining the amount of the award, may consider whether a party's refusal to participate in alternative dispute resolution before commencement of the action was reasonable.

1369.590. (a) An association shall annually provide its members a summary of the provisions of this article that specifically references this article. The summary shall include the following language:

''Failure of a member of the association to comply with the alternative dispute resolution requirements of Section 1369.520 of the Civil Code may result in the loss of your right to sue the association or another member of the association regarding enforcement of the governing documents or the applicable law.''

(b) The summary shall be provided either at the time the pro forma budget required by Section 1365 is distributed or in the manner prescribed in Section 5016 of the Corporations Code. The summary shall include a description of the association's internal dispute resolution process, as required by Section 1363.850.

SEC. 7. Section 383 of the Code of Civil Procedure is repealed.

SEC. 8. Section 2.5 of this bill incorporates amendments to Section 1357.120 of the Civil Code proposed by both this bill and AB 2376. 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 2376, in which case Section 2 of this bill shall not become operative.

CHAPTER 755

An act to amend Sections 407.5, 12500, 12509, 12804.9, 21225, and 21235 of, and to add Section 21226 to, the Vehicle Code, relating to vehicles.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 24, 2004.]

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

SECTION 1. Section 407.5 of the Vehicle Code, as amended by Section 2 of Chapter 979 of the Statutes of 2002, is amended to read:

407.5. (a) A ''motorized scooter'' is any two-wheeled device that has handlebars, has a floorboard that is designed to be stood upon when riding, and is powered by an electric motor. This device may also have a driver seat that does not interfere with the ability of the rider to stand and ride and may also be designed to be powered by human propulsion. For purposes of this section, an electric personal assistive mobility device, as defined in Section 313, a motorcycle, as defined in Section 400, a motor-driven cycle, as defined in Section 405, or a motorized bicycle or moped, as defined in Section 406, is not a motorized scooter.

(b) A device meeting the definition in subdivision (a) that is powered by a source other than electrical power is also a motorized scooter.

(c) (1) A manufacturer of motorized scooters shall provide a disclosure to buyers that advises buyers that the buyers' existing insurance policies may not provide coverage for these scooters and that the buyers should contact their insurance company or insurance agent to determine if coverage is provided.

(2) The disclosure required under paragraph (1) shall meet both of the following requirements:

(A) The disclosure shall be printed in not less than 14-point boldface type on a single sheet of paper that contains no information other than the disclosure.

(B) The disclosure shall include the following language in capital letters:

''YOUR INSURANCE POLICIES MAY NOT PROVIDE COVERAGE FOR ACCIDENTS INVOLVING THE USE OF THIS SCOOTER. TO DETERMINE IF COVERAGE IS PROVIDED, YOU SHOULD CONTACT YOUR INSURANCE COMPANY OR AGENT.''

(d) (1) A manufacturer of motorized scooters shall provide a disclosure to a buyer that advises the buyer that the buyer may not modify or alter the exhaust system to cause that system to amplify or create an excessive noise, or to fail to meet applicable emission requirements.

(2) The disclosure required under paragraph (1) shall meet both of the following requirements:

(A) The disclosure shall be printed in not less than 14-point boldface type on a single sheet of paper that contains no information other than the disclosure.

(B) The disclosure shall include the following language in capital letters:

''YOU MAY NOT MODIFY OR ALTER THE EXHAUST SYSTEM OF THIS SCOOTER TO CAUSE IT TO AMPLIFY OR CREATE EXCESSIVE NOISE PER VEHICLE CODE SECTION 21226, OR TO FAIL TO MEET APPLICABLE EMISSION REQUIREMENTS PER VEHICLE CODE SECTION 27156.''

(e) This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2008, deletes or extends that date.

SEC. 2. Section 407.5 of the Vehicle Code, as added by Section 3 of Chapter 979 of the Statutes of 2002, is amended to read:

407.5. (a) A ''motorized scooter'' is any two-wheeled device that has handlebars, has a floorboard that is designed to be stood upon when riding, and is powered by an electric motor. This device may also have a driver seat that does not interfere with the ability of the rider to stand and ride and may also be designed to be powered by human propulsion. For purposes of this section, a motorcycle, as defined in Section 400, a motor-driven cycle, as defined in Section 405, or a motorized bicycle or moped, as defined in Section 406, is not a motorized scooter.

(b) A device meeting the definition in subdivision (a) that is powered by a source other than electrical power is also a motorized scooter.

(c) (1) A manufacturer of motorized scooters shall provide a disclosure to buyers that advises buyers that the buyers' existing insurance policies may not provide coverage for these scooters and that

the buyers should contact their insurance company or insurance agent to determine if coverage is provided.

(2) The disclosure required under paragraph (1) shall meet both of the following requirements:

(A) The disclosure shall be printed in not less than 14-point boldface type on a single sheet of paper that contains no information other than the disclosure.

(B) The disclosure shall include the following language in capital letters:

"YOUR INSURANCE POLICIES MAY NOT PROVIDE COVERAGE FOR ACCIDENTS INVOLVING THE USE OF THIS SCOOTER. TO DETERMINE IF COVERAGE IS PROVIDED, YOU SHOULD CONTACT YOUR INSURANCE COMPANY OR AGENT."

(d) (1) A manufacturer of motorized scooters shall provide a disclosure to a buyer that advises the buyer that the buyer may not modify or alter the exhaust system to cause that system to amplify or create an excessive noise, or to fail to meet applicable emission requirements.

(2) The disclosure required under paragraph (1) shall meet both of the following requirements:

(A) The disclosure shall be printed in not less than 14-point boldface type on a single sheet of paper that contains no information other than the disclosure.

(B) The disclosure shall include the following language in capital letters:

"YOU MAY NOT MODIFY OR ALTER THE EXHAUST SYSTEM OF THIS SCOOTER TO CAUSE IT TO AMPLIFY OR CREATE EXCESSIVE NOISE PER VEHICLE CODE SECTION 21226, OR TO FAIL TO MEET APPLICABLE EMISSION REQUIREMENTS PER VEHICLE CODE 27156."

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

SEC. 3. Section 12500 of the Vehicle Code is amended to read:

12500. (a) A person may not drive a motor vehicle upon a highway, unless the person then holds a valid driver's license issued under this code, except those persons who are expressly exempted under this code.

(b) A person may not drive a motorcycle, motor-driven cycle, or motorized bicycle upon a highway, unless the person then holds a valid driver's license or endorsement issued under this code for that class, except those persons who are expressly exempted under this code, or

those persons specifically authorized to operate motorized bicycles or motorized scooters with a valid driver's license of any class, as specified in subdivision (g) of Section 12804.9.

(c) A person may not drive a motor vehicle in or upon any offstreet parking facility, unless the person then holds a valid driver's license of the appropriate class or certification to operate the vehicle. As used in this subdivision, ''offstreet parking facility'' means any offstreet facility held open for use by the public for parking vehicles and includes any publicly owned facilities for offstreet parking, and privately owned facilities for offstreet parking where no fee is charged for the privilege to park and which are held open for the common public use of retail customers.

(d) A person may not drive a motor vehicle or combination of vehicles that is not of a type for which the person is licensed.

(e) A motorized scooter operated on public streets shall at all times be equipped with an engine that complies with the applicable State Air Resources Board emission requirements.

SEC. 4. Section 12509 of the Vehicle Code is amended to read:

12509. (a) Except as otherwise provided in subdivision (f) of Section 12514, the department, for good cause, may issue an instruction permit to any physically and mentally qualified person who meets one of the following requirements and who applies to the department for an instruction permit:

(1) Is age 15 years and 6 months or over, and has successfully completed approved courses in automobile driver education and driver training as provided in paragraph (3) of subdivision (a) of Section 12814.6.

(2) Is age 15 years and 6 months or over, and has successfully completed an approved course in automobile driver education and is taking driver training as provided in paragraph (3) of subdivision (a) of Section 12814.6.

(3) Is age 15 years and 6 months and enrolled and participating in an integrated driver education program as provided in subparagraph (B) of paragraph (3) of subdivision (a) of Section 12814.6.

(4) Is over the age of 16 years and is applying for a restricted driver's license pursuant to Section 12814.7.

(5) Is over the age of 17 years and 6 months.

(b) The applicant shall qualify for, and be issued, an instruction permit within 12 months from the date of the application.

(c) An instruction permit issued pursuant to subdivision (a) shall entitle the applicant to operate a vehicle, subject to the limitations imposed by this section and any other provisions of law, upon the highways for a period not exceeding 24 months from the date of the application.

(d) Except as provided in Section 12814.6, a person, while having in his or her immediate possession a valid permit issued pursuant to paragraphs (1) to (3), inclusive, of subdivision (a), may operate a motor vehicle, other than a motorcycle, motorized scooter, or a motorized bicycle, when accompanied by, and under the immediate supervision of, a California licensed driver with a valid license of the appropriate class, 18 years of age or over whose driving privilege is not on probation. Except as provided in subdivision (e), an accompanying licensed driver at all times shall occupy a position within the driver's compartment that would enable the accompanying licensed driver to assist the person in controlling the vehicle as may be necessary to avoid a collision and to provide immediate guidance in the safe operation of the vehicle.

(e) A person while having in his or her immediate possession a valid permit issued pursuant to paragraphs (1) to (3), inclusive, of subdivision (a), who is age 15 years and 6 months or over and who has successfully completed approved courses in automobile education and driver training as provided in paragraph (3) of subdivision (a) of Section 12814.6, and a person while having in his or her immediate possession a valid permit issued pursuant to subdivision (a) who is age 17 years and 6 months or over, may, in addition to operating a motor vehicle pursuant to subdivision (d), also operate a motorcycle, motorized scooter, or a motorized bicycle, except that the person shall not operate a motorcycle, motorized scooter, or a motorized bicycle during hours of darkness, shall stay off any freeways that have full control of access and no crossings at grade and shall not carry any passenger except an instructor licensed under Chapter 1 (commencing with Section 11100) of Division 5 of this code or a qualified instructor as defined in Section 18252.2 of the Education Code.

(f) A person while having in his or her immediate possession a valid permit issued pursuant to paragraph (4) of subdivision (a), may only operate a government-owned motor vehicle, other than a motorcycle, motorized scooter, or a motorized bicycle, when taking a driver training instruction administered by the California National Guard.

(g) The department may also issue an instruction permit to a person who has been issued a valid driver's license to authorize the person to obtain driver training instruction and to practice that instruction in order to obtain another class of driver's license or an endorsement.

(h) The department may further restrict permits issued under subdivision (a) as it may determine to be appropriate to assure the safe operation of a motor vehicle by the permittee.

SEC. 5. Section 12804.9 of the Vehicle Code is amended to read:

12804.9. (a) (1) The examination shall include all of the following:

(A) A test of the applicant's knowledge and understanding of the provisions of this code governing the operation of vehicles upon the highways.

(B) A test of the applicant's ability to read and understand simple English used in highway traffic and directional signs.

(C) A test of the applicant's understanding of traffic signs and signals, including the bikeway signs, markers, and traffic control devices established by the Department of Transportation.

(D) An actual demonstration of the applicant's ability to exercise ordinary and reasonable control in operating a motor vehicle by driving it under the supervision of an examining officer. The applicant shall submit to an examination appropriate to the type of motor vehicle or combination of vehicles he or she desires a license to drive, except that the department may waive the driving test part of the examination for any applicant who submits a license issued by another state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico if the department verifies through any acknowledged national driver record data source that there are no stops, holds, or other impediments to its issuance. The examining officer may request to see evidence of financial responsibility for the vehicle prior to supervising the demonstration of the applicant's ability to operate the vehicle. The examining officer may refuse to examine an applicant who is unable to provide proof of financial responsibility for the vehicle, unless proof of financial responsibility is not required by this code.

(E) A test of the hearing and eyesight of the applicant, and of other matters that may be necessary to determine the applicant's mental and physical fitness to operate a motor vehicle upon the highways, and whether any grounds exist for refusal of a license under this code.

(2) The examination for a class A or class B driver's license under subdivision (b) shall also include a report of a medical examination of the applicant given not more than two years prior to the date of the application by a health care professional. As used in this subdivision, ''health care professional'' means a person who is licensed, certified, or registered in accordance with applicable state laws and regulations to practice medicine and perform physical examinations in the United States of America. Health care professionals are doctors of medicine, doctors of osteopathy, physician assistants, and registered advanced practice nurses, or doctors of chiropractic who are clinically competent to perform the medical examination presently required of motor carrier drivers by the Federal Highway Administration. The report shall be on a form approved by the department, the Federal Highway Administration, or the Federal Aviation Administration. In establishing the requirements, consideration may be given to the standards presently

required of motor carrier drivers by the Federal Highway Administration.

(3) Any physical defect of the applicant, that, in the opinion of the department, is compensated for to ensure safe driving ability, shall not prevent the issuance of a license to the applicant.

(b) In accordance with the following classifications, any applicant for a driver's license shall be required to submit to an examination appropriate to the type of motor vehicle or combination of vehicles the applicant desires a license to drive:

(1) Class A includes the following:

(A) A combination of vehicles, if any vehicle being towed has a gross vehicle weight rating of more than 10,000 pounds.

(B) A vehicle towing more than one vehicle.

(C) A trailer bus.

(D) The operation of all vehicles under class B and class C.

(2) Class B includes the following:

(A) A single vehicle with a gross vehicle weight rating of more than 26,000 pounds.

(B) A single vehicle with three or more axles, except any three-axle vehicle weighing less than 6,000 pounds.

(C) A bus except a trailer bus.

(D) A farm labor vehicle.

(E) A single vehicle with three or more axles or a gross vehicle weight rating of more than 26,000 pounds towing another vehicle with a gross vehicle weight rating of 10,000 pounds or less.

(F) A house car over 40 feet in length, excluding safety devices and safety bumpers.

(G) The operation of all vehicles covered under class C.

(3) Class C includes the following:

(A) A two-axle vehicle with a gross vehicle weight rating of 26,000 pounds or less, including when the vehicle is towing a trailer or semitrailer with a gross vehicle weight rating of 10,000 pounds or less.

(B) Notwithstanding subparagraph (A), a two-axle vehicle weighing 4,000 pounds or more unladen when towing a trailer coach not exceeding 9,000 pounds gross.

(C) A house car of 40 feet in length or less.

(D) A three-axle vehicle weighing 6,000 pounds gross or less.

(E) A house car of 40 feet in length or less or vehicle towing another vehicle with a gross vehicle weight rating of 10,000 pounds or less, including when a tow dolly is used. A person driving a vehicle may not tow another vehicle in violation of Section 21715.

(F) (i) A two-axle vehicle weighing 4,000 pounds or more unladen when towing either a trailer coach or a fifth-wheel travel trailer not

exceeding 10,000 pounds gross vehicle weight rating, when the towing of the trailer is not for compensation.

(ii) A two-axle vehicle weighing 4,000 pounds or more unladen when towing a fifth-wheel travel trailer exceeding 10,000 pounds, but not exceeding 15,000 pounds, gross vehicle weight rating, when the towing of the trailer is not for compensation, and if the person has passed a specialized written examination provided by the department relating to the knowledge of this code and other safety aspects governing the towing of recreational vehicles upon the highway.

The authority to operate combinations of vehicles under this subparagraph may be granted by endorsement on a class C license upon completion of that written examination.

(G) A vehicle or combination of vehicles with a gross combination weight rating or a gross vehicle weight rating, as those terms are defined in subdivisions (g) and (h), respectively, of Section 15210, of 26,000 pounds or less, if all of the following conditions are met:

(i) Is operated by a farmer, an employee of a farmer, or an instructor credentialed in agriculture as part of an instructional program in agriculture at the high school, community college, or university level.

(ii) Is used exclusively in the conduct of agricultural operations.

(iii) Is not used in the capacity of a for-hire carrier or for compensation.

(H) A motorized scooter.

(I) Class C does not include a two-wheel motorcycle or a two-wheel motor-driven cycle.

(4) Class M1. A two-wheel motorcycle or a motor-driven cycle. Authority to operate a vehicle included in a class M1 license may be granted by endorsement on a class A, B, or C license upon completion of an appropriate examination.

(5) Class M2. A motorized bicycle or moped, or a bicycle with an attached motor, except a motorized bicycle described in subdivision (b) of Section 406. Authority to operate vehicles included in class M2 may be granted by endorsement on a class A, B, or C license upon completion of an appropriate examination. Persons holding a class M1 license or endorsement may operate vehicles included in class M2 without further examination.

(c) A driver's license or driver certificate is not valid for operating a commercial motor vehicle, as defined in subdivision (b) of Section 15210, any other motor vehicle defined in paragraph (1) or (2) of subdivision (b), or any other vehicle requiring a driver to hold any driver certificate or any driver's license endorsement under Section 15275, unless a medical certificate approved by the department, the Federal Highway Administration, or the Federal Aviation Administration, that has been issued within two years of the date of the operation of that

vehicle, is within the licensee's immediate possession, and a copy of the medical examination report from which the certificate was issued is on file with the department. Otherwise, the license is valid only for operating class C vehicles that are not commercial vehicles, as defined in subdivision (b) of Section 15210, and for operating class M1 or M2 vehicles, if so endorsed, that are not commercial vehicles, as defined in subdivision (b) of Section 15210.

(d) A license or driver certificate issued prior to the enactment of Chapter 7 (commencing with Section 15200) is valid to operate the class or type of vehicles specified under the law in existence prior to that enactment until the license or certificate expires or is otherwise suspended, revoked, or canceled.

(e) The department may accept a certificate of driving skill that is issued by an employer, authorized by the department to issue a certificate under Section 15250, of the applicant, in lieu of a driving test, on class A or B applications, if the applicant has first qualified for a class C license and has met the other examination requirements for the license for which he or she is applying. The certificate may be submitted as evidence of the applicant's skill in the operation of the types of equipment covered by the license for which he or she is applying.

(f) The department may accept a certificate of competence in lieu of a driving test on class M1 or M2 applications, when the certificate is issued by a law enforcement agency for its officers who operate class M1 or M2 vehicles in their duties, if the applicant has met the other examination requirements for the license for which he or she is applying.

(g) The department may accept a certificate of satisfactory completion of a novice motorcyclist training program approved by the commissioner pursuant to Section 2932 in lieu of a driving test on class M1 or M2 applications, if the applicant has met the other examination requirements for the license for which he or she is applying. The department shall review and approve the written and driving test used by a program to determine whether the program may issue a certificate of completion.

(h) Notwithstanding subdivision (b), a person holding a valid California driver's license of any class may operate a short-term rental motorized bicycle without taking any special examination for the operation of a motorized bicycle, and without having a class M2 endorsement on that license. As used in this subdivision, ''short-term'' means 48 hours or less.

(i) A person under the age of 21 years may not be issued a class M1 or M2 license or endorsement unless he or she provides evidence satisfactory to the department of completion of a motorcycle safety training program that is operated pursuant to Article 2 (commencing with Section 2930) of Chapter 5 of Division 2.

(j) A driver of a vanpool vehicle may operate with class C licenses but shall possess evidence of a medical examination required for a class B license when operating vanpool vehicles. In order to be eligible to drive the vanpool vehicle, the driver shall keep in the vanpool vehicle a statement, signed under penalty of perjury, that he or she has not been convicted of reckless driving, drunk driving, or a hit-and-run offense in the last five years.

(k) A class M license issued between January 1, 1989, and December 31, 1992, shall permit the holder to operate any motorcycle, motor-driven cycle, or motorized bicycle until the expiration of the license.

SEC. 5.1. Section 12804.9 of the Vehicle Code is amended to read:

12804.9. (a) (1) The examination shall include all of the following:

(A) A test of the applicant's knowledge and understanding of the provisions of this code governing the operation of vehicles upon the highways.

(B) A test of the applicant's ability to read and understand simple English used in highway traffic and directional signs.

(C) A test of the applicant's understanding of traffic signs and signals, including the bikeway signs, markers, and traffic control devices established by the Department of Transportation.

(D) An actual demonstration of the applicant's ability to exercise ordinary and reasonable control in operating a motor vehicle by driving it under the supervision of an examining officer. The applicant shall submit to an examination appropriate to the type of motor vehicle or combination of vehicles he or she desires a license to drive, except that the department may waive the driving test part of the examination for any applicant who submits a license issued by another state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico if the department verifies through any acknowledged national driver record data source that there are no stops, holds, or other impediments to its issuance. The examining officer may request to see evidence of financial responsibility for the vehicle prior to supervising the demonstration of the applicant's ability to operate the vehicle. The examining officer may refuse to examine an applicant who is unable to provide proof of financial responsibility for the vehicle, unless proof of financial responsibility is not required by this code.

(E) A test of the hearing and eyesight of the applicant, and of other matters that may be necessary to determine the applicant's mental and physical fitness to operate a motor vehicle upon the highways, and whether any grounds exist for refusal of a license under this code.

(2) The examination for a class A or class B driver's license under subdivision (b) shall also include a report of a medical examination of

the applicant given not more than two years prior to the date of the application by a health care professional. As used in this subdivision, ''health care professional'' means a person who is licensed, certified, or registered in accordance with applicable state laws and regulations to practice medicine and perform physical examinations in the United States of America. Health care professionals are doctors of medicine, doctors of osteopathy, physician assistants, and registered advanced practice nurses, or doctors of chiropractic who are clinically competent to perform the medical examination presently required of motor carrier drivers by the Federal Highway Administration. The report shall be on a form approved by the department, the Federal Highway Administration, or the Federal Aviation Administration. In establishing the requirements, consideration may be given to the standards presently required of motor carrier drivers by the Federal Highway Administration.

(3) Any physical defect of the applicant, which, in the opinion of the department, is compensated for to ensure safe driving ability, shall not prevent the issuance of a license to the applicant.

(b) In accordance with the following classifications, any applicant for a driver's license shall be required to submit to an examination appropriate to the type of motor vehicle or combination of vehicles the applicant desires a license to drive:

(1) Class A includes the following:

(A) A combination of vehicles, if any vehicle being towed has a gross vehicle weight rating of more than 10,000 pounds.

(B) A vehicle towing more than one vehicle.

(C) A trailer bus.

(D) The operation of all vehicles under class B and class C.

(2) Class B includes the following:

(A) A single vehicle with a gross vehicle weight rating of more than 26,000 pounds.

(B) A single vehicle with three or more axles, except any three-axle vehicle weighing less than 6,000 pounds.

(C) A bus except a trailer bus.

(D) A farm labor vehicle.

(E) A single vehicle with three or more axles or a gross vehicle weight rating of more than 26,000 pounds towing another vehicle with a gross vehicle weight rating of 10,000 pounds or less.

(F) A house car over 40 feet in length, excluding safety devices and safety bumpers.

(G) The operation of all vehicles covered under class C.

(3) Class C includes the following:

(A) A two-axle vehicle with a gross vehicle weight rating of 26,000 pounds or less, including when the vehicle is towing a trailer or semitrailer with a gross vehicle weight rating of 10,000 pounds or less.

(B) Notwithstanding subparagraph (A), a two-axle vehicle weighing 4,000 pounds or more unladen when towing a trailer coach not exceeding 9,000 pounds gross.

(C) A house car of 40 feet in length or less.

(D) A three-axle vehicle weighing 6,000 pounds gross or less.

(E) A house car of 40 feet in length or less or vehicle towing another vehicle with a gross vehicle weight rating of 10,000 pounds or less, including when a tow dolly is used. A person driving a vehicle may not tow another vehicle in violation of Section 21715.

(F) (i) A two-axle vehicle weighing 4,000 pounds or more unladen when towing either a trailer coach or a fifth-wheel travel trailer not exceeding 10,000 pounds gross vehicle weight rating, when the towing of the trailer is not for compensation.

(ii) A two-axle vehicle weighing 4,000 pounds or more unladen when towing a fifth-wheel travel trailer exceeding 10,000 pounds, but not exceeding 15,000 pounds, gross vehicle weight rating, when the towing of the trailer is not for compensation, and if the person has passed a specialized written examination provided by the department relating to the knowledge of this code and other safety aspects governing the towing of recreational vehicles upon the highway.

The authority to operate combinations of vehicles under this subparagraph may be granted by endorsement on a class C license upon completion of that written examination.

(G) A vehicle or combination of vehicles with a gross combination weight rating or a gross vehicle weight rating, as those terms are defined in subdivisions (g) and (h), respectively, of Section 15210, of 26,000 pounds or less, if all of the following conditions are met:

(i) Is operated by a farmer, an employee of a farmer, or an instructor credentialed in agriculture as part of an instructional program in agriculture at the high school, community college, or university level.

(ii) Is used exclusively in the conduct of agricultural operations.

(iii) Is not used in the capacity of a for-hire carrier or for compensation.

(H) A motorized scooter.

(I) Class C does not include a two-wheel motorcycle or a two-wheel motor-driven cycle.

(4) Class M1. A two-wheel motorcycle or a motor-driven cycle. Authority to operate a vehicle included in a class M1 license may be granted by endorsement on a class A, B, or C license upon completion of an appropriate examination.

(5) Class M2. A motorized bicycle or moped, or a bicycle with an attached motor, except a motorized bicycle described in subdivision (b) of Section 406. Authority to operate vehicles included in class M2 may be granted by endorsement on a class A, B, or C license upon completion of an appropriate examination. Persons holding a class M1 license or endorsement may operate vehicles included in class M2 without further examination.

(c) A driver's license or driver certificate is not valid for operating any commercial motor vehicle, as defined in subdivision (b) of Section 15210, any other motor vehicle defined in paragraph (1) or (2) of subdivision (b), or any other vehicle requiring a driver to hold any driver certificate or any driver's license endorsement under Section 15275, unless a medical certificate approved by the department, the Federal Highway Administration, or the Federal Aviation Administration, that has been issued within two years of the date of the operation of that vehicle, is within the licensee's immediate possession, and a copy of the medical examination report from which the certificate was issued is on file with the department. Otherwise, the license is valid only for operating class C vehicles that are not commercial vehicles, as defined in subdivision (b) of Section 15210, and for operating class M1 or M2 vehicles, if so endorsed, that are not commercial vehicles, as defined in subdivision (b) of Section 15210.

(d) A license or driver certificate issued prior to the enactment of Chapter 7 (commencing with Section 15200) is valid to operate the class or type of vehicles specified under the law in existence prior to that enactment until the license or certificate expires or is otherwise suspended, revoked, or canceled.

(e) The department may accept a certificate of driving skill that is issued by an employer, authorized by the department to issue a certificate under Section 15250, of the applicant, in lieu of a driving test, on class A or B applications, if the applicant has first qualified for a class C license and has met the other examination requirements for the license for which he or she is applying. The certificate may be submitted as evidence of the applicant's skill in the operation of the types of equipment covered by the license for which he or she is applying.

(f) The department may accept a certificate of competence in lieu of a driving test on class M1 or M2 applications, when the certificate is issued by a law enforcement agency for its officers who operate class M1 or M2 vehicles in their duties, if the applicant has met the other examination requirements for the license for which he or she is applying.

(g) The department may accept a certificate of satisfactory completion of a novice motorcyclist training program approved by the commissioner pursuant to Section 2932 in lieu of a driving test on class M1 or M2 applications, if the applicant has met the other examination

requirements for the license for which he or she is applying. The department shall review and approve the written and driving test used by a program to determine whether the program may issue a certificate of completion.

(h) Notwithstanding subdivision (b), a person holding a valid California driver's license of any class may operate a short-term rental motorized bicycle without taking any special examination for the operation of a motorized bicycle, and without having a class M2 endorsement on that license. As used in this subdivision, ''short-term'' means 48 hours or less.

(i) A person under the age of 21 years may not be issued a class M1 or M2 license or endorsement unless he or she provides evidence satisfactory to the department of completion of a motorcycle safety training program that is operated pursuant to Article 2 (commencing with Section 2930) of Chapter 5 of Division 2.

(j) A driver of a vanpool vehicle may operate with class C licenses but shall possess evidence of a medical examination required for a class B license when operating vanpool vehicles. In order to be eligible to drive the vanpool vehicle, the driver shall keep in the vanpool vehicle a statement, signed under penalty of perjury, that he or she has not been convicted of reckless driving, drunk driving, or a hit-and-run offense in the last five years.

(k) A class M license issued between January 1, 1989, and December 31, 1992, shall permit the holder to operate any motorcycle, motor-driven cycle, or motorized bicycle until the expiration of the license.

(*l*) This section shall become inoperative on September 20, 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 that date.

SEC. 5.2. Section 12804.9 is added to the Vehicle Code, to read:

12804.9. (a) (1) The examination shall include all of the following:

(A) A test of the applicant's knowledge and understanding of the provisions of this code governing the operation of vehicles upon the highways.

(B) A test of the applicant's ability to read and understand simple English used in highway traffic and directional signs.

(C) A test of the applicant's understanding of traffic signs and signals, including the bikeway signs, markers, and traffic control devices established by the Department of Transportation.

(D) An actual demonstration of the applicant's ability to exercise ordinary and reasonable control in operating a motor vehicle by driving it under the supervision of an examining officer. The applicant shall

submit to an examination appropriate to the type of motor vehicle or combination of vehicles he or she desires a license to drive, except that the department may waive the driving test part of the examination for any applicant who submits a license issued by another state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico if the department verifies through any acknowledged national driver record data source that there are no stops, holds, or other impediments to its issuance. The examining officer may request to see evidence of financial responsibility for the vehicle prior to supervising the demonstration of the applicant's ability to operate the vehicle. The examining officer may refuse to examine an applicant who is unable to provide proof of financial responsibility for the vehicle, unless proof of financial responsibility is not required by this code.

(E) A test of the hearing and eyesight of the applicant, and of other matters that may be necessary to determine the applicant's mental and physical fitness to operate a motor vehicle upon the highways, and whether any grounds exist for refusal of a license under this code.

(2) The examination for a class A or class B driver's license under subdivision (b) shall also include a report of a medical examination of the applicant given not more than two years prior to the date of the application by a health care professional. As used in this subdivision, ''health care professional'' means a person who is licensed, certified, or registered in accordance with applicable state laws and regulations to practice medicine and perform physical examinations in the United States of America. Health care professionals are doctors of medicine, doctors of osteopathy, physician assistants, and registered advanced practice nurses, or doctors of chiropractic who are clinically competent to perform the medical examination presently required of motor carrier drivers by the Federal Highway Administration. The report shall be on a form approved by the department, the Federal Highway Administration, or the Federal Aviation Administration. In establishing the requirements, consideration may be given to the standards presently required of motor carrier drivers by the Federal Highway Administration.

(3) Any physical defect of the applicant, which, in the opinion of the department, is compensated for to ensure safe driving ability, shall not prevent the issuance of a license to the applicant.

(b) In accordance with the following classifications, any applicant for a driver's license shall be required to submit to an examination appropriate to the type of motor vehicle or combination of vehicles the applicant desires a license to drive:

(1) Class A includes the following:

(A) A combination of vehicles, if any vehicle being towed has a gross vehicle weight rating of more than 10,000 pounds.

(B) A vehicle towing more than one vehicle.

(C) A trailer bus.

(D) The operation of all vehicles under class B and class C.

(2) Class B includes the following:

(A) A single vehicle with a gross vehicle weight rating of more than 26,000 pounds.

(B) A single vehicle with three or more axles, except any three-axle vehicle weighing less than 6,000 pounds.

(C) A bus except a trailer bus.

(D) A farm labor vehicle.

(E) A single vehicle with three or more axles or a gross vehicle weight rating of more than 26,000 pounds towing another vehicle with a gross vehicle weight rating of 10,000 pounds or less.

(F) A house car over 40 feet in length, excluding safety devices and safety bumpers.

(G) The operation of all vehicles covered under class C.

(3) Class C includes the following:

(A) A two-axle vehicle with a gross vehicle weight rating of 26,000 pounds or less, including when the vehicle is towing a trailer or semitrailer with a gross vehicle weight rating of 10,000 pounds or less.

(B) Notwithstanding subparagraph (A), a two-axle vehicle weighing 4,000 pounds or more unladen when towing a trailer coach not exceeding 9,000 pounds gross.

(C) A house car of 40 feet in length or less.

(D) A three-axle vehicle weighing 6,000 pounds gross or less.

(E) A house car of 40 feet in length or less or vehicle towing another vehicle with a gross vehicle weight rating of 10,000 pounds or less, including when a tow dolly is used. A person driving a vehicle may not tow another vehicle in violation of Section 21715.

(F) (i) A two-axle vehicle weighing 4,000 pounds or more unladen when towing either a trailer coach or a fifth-wheel travel trailer not exceeding 10,000 pounds gross vehicle weight rating, when the towing of the trailer is not for compensation.

(ii) A two-axle vehicle weighing 4,000 pounds or more unladen when towing a fifth-wheel travel trailer exceeding 10,000 pounds, but not exceeding 15,000 pounds, gross vehicle weight rating, when the towing of the trailer is not for compensation, and if the person has passed a specialized written examination provided by the department relating to the knowledge of this code and other safety aspects governing the towing of recreational vehicles upon the highway.

The authority to operate combinations of vehicles under this subparagraph may be granted by endorsement on a class C license upon completion of that written examination.

(G) A vehicle or combination of vehicles with a gross combination weight rating or a gross vehicle weight rating, as those terms are defined in subdivisions (j) and (k), respectively, of Section 15210, of 26,000 pounds or less, if all of the following conditions are met:

(i) Is operated by a farmer, an employee of a farmer, or an instructor credentialed in agriculture as part of an instructional program in agriculture at the high school, community college, or university level.

(ii) Is used exclusively in the conduct of agricultural operations.

(iii) Is not used in the capacity of a for-hire carrier or for compensation.

(H) A motorized scooter.

(I) Class C does not include a two-wheel motorcycle or a two-wheel motor-driven cycle.

(4) Class M1. A two-wheel motorcycle or a motor-driven cycle. Authority to operate a vehicle included in a class M1 license may be granted by endorsement on a class A, B, or C license upon completion of an appropriate examination.

(5) Class M2. A motorized bicycle or moped, or a bicycle with an attached motor, except a motorized bicycle described in subdivision (b) of Section 406. Authority to operate vehicles included in class M2 may be granted by endorsement on a class A, B, or C license upon completion of an appropriate examination. Persons holding a class M1 license or endorsement may operate vehicles included in class M2 without further examination.

(c) A driver's license or driver certificate is not valid for operating any commercial motor vehicle, as defined in subdivision (b) of Section 15210, any other motor vehicle defined in paragraph (1) or (2) of subdivision (b), or any other vehicle requiring a driver to hold any driver certificate or any driver's license endorsement under Section 15275, unless a medical certificate approved by the department, the Federal Highway Administration, or the Federal Aviation Administration, that has been issued within two years of the date of the operation of that vehicle, is within the licensee's immediate possession, and a copy of the medical examination report from which the certificate was issued is on file with the department. Otherwise, the license is valid only for operating class C vehicles that are not commercial vehicles, as defined in subdivision (b) of Section 15210, and for operating class M1 or M2 vehicles, if so endorsed, that are not commercial vehicles, as defined in subdivision (b) of Section 15210.

(d) A license or driver certificate issued prior to the enactment of Chapter 7 (commencing with Section 15200) is valid to operate the class or type of vehicles specified under the law in existence prior to that enactment until the license or certificate expires or is otherwise suspended, revoked, or canceled.

(e) The department may accept a certificate of driving skill that is issued by an employer, authorized by the department to issue a certificate under Section 15250, of the applicant, in lieu of a driving test, on class A or B applications, if the applicant has first qualified for a class C license and has met the other examination requirements for the license for which he or she is applying. The certificate may be submitted as evidence of the applicant's skill in the operation of the types of equipment covered by the license for which he or she is applying.

(f) The department may accept a certificate of competence in lieu of a driving test on class M1 or M2 applications, when the certificate is issued by a law enforcement agency for its officers who operate class M1 or M2 vehicles in their duties, if the applicant has met the other examination requirements for the license for which he or she is applying.

(g) The department may accept a certificate of satisfactory completion of a novice motorcyclist training program approved by the commissioner pursuant to Section 2932 in lieu of a driving test on class M1 or M2 applications, if the applicant has met the other examination requirements for the license for which he or she is applying. The department shall review and approve the written and driving test used by a program to determine whether the program may issue a certificate of completion.

(h) Notwithstanding subdivision (b), a person holding a valid California driver's license of any class may operate a short-term rental motorized bicycle without taking any special examination for the operation of a motorized bicycle, and without having a class M2 endorsement on that license. As used in this subdivision, ''short-term'' means 48 hours or less.

(i) A person under the age of 21 years may not be issued a class M1 or M2 license or endorsement unless he or she provides evidence satisfactory to the department of completion of a motorcycle safety training program that is operated pursuant to Article 2 (commencing with Section 2930) of Chapter 5 of Division 2.

(j) A driver of a vanpool vehicle may operate with class C licenses but shall possess evidence of a medical examination required for a class B license when operating vanpool vehicles. In order to be eligible to drive the vanpool vehicle, the driver shall keep in the vanpool vehicle a statement, signed under penalty of perjury, that he or she has not been convicted of reckless driving, drunk driving, or a hit-and-run offense in the last five years.

(k) A class M license issued between January 1, 1989, and December 31, 1992, shall permit the holder to operate any motorcycle, motor-driven cycle, or motorized bicycle until the expiration of the license.

(*l*) This section shall become operative on September 20, 2005.

SEC. 6. Section 21225 of the Vehicle Code is amended to read:

21225. This article does not prevent a local authority, by ordinance, from regulating the registration of motorized scooters and the parking and operation of motorized scooters on pedestrian or bicycle facilities and local streets and highways, if that regulation is not in conflict with this code.

SEC. 7. Section 21226 is added to the Vehicle Code, to read:

21226. (a) A person shall not sell or offer for sale a motorized scooter that produces a maximum noise level exceeding 80 dbA at a distance of 50 feet from the centerline of travel when tested in accordance with Society of Automotive Engineers (SAE) Recommended Practice J331 JAN00.

(b) A motorized scooter, as defined in subdivision (b) of Section 407.5, shall at all times be equipped with a muffler meeting the requirements of this section, in constant operation and properly maintained to prevent any excessive or unusual noise, and a muffler or exhaust system shall not be equipped with a cutout, bypass, or similar device.

(c) A motorized scooter, as defined in subdivision (b) of Section 407.5, operated off the highways shall at all times be equipped with a muffler meeting the requirements of this section, in constant operation and properly maintained to prevent any excessive or unusual noise, and a muffler or exhaust system shall not be equipped with a cutout, bypass, or similar device.

(d) A person shall not modify the exhaust system of a motorized scooter in a manner that will amplify or increase the noise level emitted by the motor of the scooter so that it is not in compliance with this section or exceeds the noise level limit established by subdivision (a). A person shall not operate a motorized scooter with an exhaust system so modified.

SEC. 8. Section 21235 of the Vehicle Code is amended to read:

21235. The operator of a motorized scooter shall not do any of the following:

(a) Operate a motorized scooter unless it is equipped with a brake that will enable the operator to make a braked wheel skid on dry, level, clean pavement.

(b) Operate a motorized scooter on a highway with a speed limit in excess of 25 miles per hour unless the motorized scooter is operated within a class II bicycle lane.

(c) Operate a motorized scooter without wearing a properly fitted and fastened bicycle helmet that meets the standards described in Section 21212.

(d) Operate a motorized scooter without a valid driver's license or instruction permit.

(e) Operate a motorized scooter with any passengers in addition to the operator.

(f) Operate a motorized scooter carrying any package, bundle, or article that prevents the operator from keeping at least one hand upon the handlebars.

(g) Operate a motorized scooter upon a sidewalk, except as may be necessary to enter or leave adjacent property.

(h) Operate a motorized scooter on the highway with the handlebars raised so that the operator must elevate his or her hands above the level of his or her shoulders in order to grasp the normal steering grip area.

(i) Leave a motorized scooter lying on its side on any sidewalk, or park a motorized scooter on a sidewalk in any other position, so that there is not an adequate path for pedestrian traffic.

(j) Attach the motorized scooter or himself or herself while on the roadway, by any means, to any other vehicle on the roadway.

SEC. 9. Sections 5.1 and 5.2 of this bill incorporate amendments to Section 12804.9 of the Vehicle Code proposed by both this bill and AB 3049. Sections 5.1 and 5.2 shall become operative only if (1) both bills are enacted and become effective on or before January 1, 2005, (2) each bill amends Section 12804.9 of the Vehicle Code, and (3) this bill is enacted after AB 3049, in which case Section 5 of this bill shall not become operative.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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 756

An act to amend Section 2232 of the Business and Professions Code, relating to medicine.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 24, 2004.]

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

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

(a) According to the Center for Sex Offender Management, a project of the United States Department of Justice:

(1) Sex offender registration was first used in the United States in the 1930s.

(2) Current sex offender registration statutes make sex offenders, because of the nature of their offenses, more visible to law enforcement and the public, with the intent of increasing public safety.

(3) Sex offender registration statutes are promoted as a means of all of the following:

(A) Deterring offenders from committing future crimes.

(B) Providing law enforcement with an additional investigative tool.

(C) Increasing public protection.

(b) The first of the current sex offender registration statutes was enacted in California in 1947 as Section 290 of the Penal Code.

(c) In California, the Medical Practice Act provides for licensing of physicians and surgeons by the Medical Board of California.

(d) Existing law requires the Medical Board of California to promptly revoke the license of any person who is subject to or becomes subject to a requirement to register as a sex offender.

SEC. 2. It is the intent of the Legislature, in order to protect and safeguard all persons seeking medical care and treatment from potential harm, to construe and clarify the meaning and effect of existing law and to thereby provide that the provisions of Section 3 of this act shall apply retrospectively as well as prospectively.

SEC. 3. Section 2232 of the Business and Professions Code is amended to read:

2232. (a) Except as provided in subdivisions (b), (c), and (d), the board shall promptly revoke the license of any person who, at any time after January 1, 1947, has been required to register as a sex offender pursuant to the provisions of Section 290 of the Penal Code.

(b) This section shall not apply to a person who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code.

(c) (1) Five years after the effective date of the revocation and three years after successful discharge from parole, probation, or both parole and probation if under simultaneous supervision, an individual who after January 1, 1947, and prior to January 1, 2005, was subject to subdivision (a), may petition the superior court, in the county in which the individual has resided for, at minimum, five years prior to filing the petition, to hold a hearing within one year of the date of the petition, in order for the court to determine whether the individual no longer poses a possible risk to patients. The individual shall provide notice of the petition to the Attorney General and to the board at the time of its filing. The Attorney

General and the board may present written and oral argument to the court on the merits of the petition.

(2) If the court finds that the individual no longer poses a possible risk to patients, and there are no other underlying reasons for which the board pursued disciplinary action, the court shall order, in writing, the board to reinstate the individual's license within 180 days of the date of the order. The board may issue a probationary license to a person subject to this paragraph subject to terms and conditions, including, but not limited to, any of the conditions of probation specified in Section 2221.

(3) If the court finds that the individual continues to pose a possible risk to patients, the court shall deny relief. The court's decision shall be binding on the individual and the board, and the individual shall be prohibited from filing a subsequent petition under this section based on the same conviction.

(d) This section shall not apply to a person who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law.

CHAPTER 757

An act to amend Section 52055.650 of the Education Code, relating to pupils.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 24, 2004.]

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

SECTION 1. Section 52055.650 of the Education Code is amended to read:

52055.650. (a) Section 52055.5 does not apply to a school participating in the High Priority Schools Grant Program.

(b) Twenty-four months after receipt of funding for implementation of the action plan pursuant to Sections 52054.5 and 52055.600 or no sooner than July 1, 2004, a school that has not met its growth targets each year shall be subject to review by the State Board of Education. This review shall include an examination of the school's progress relative to the components and reports made pursuant to Section 52055.640. The Superintendent of Public Instruction, with the approval of the State Board of Education, may direct that the governing board of a school take appropriate action and adopt appropriate strategies to provide corrective

assistance to the school in order to achieve the components and benchmarks established in the school's action plan.

(c) Thirty-six months after receipt of funding to implement a school action plan or no sooner than July 1, 2005, a school that has met or exceeded its growth target each year shall receive a monetary or nonmonetary award, under the Governor's Performance Award Program, as set forth in Section 52057. Funds received pursuant to that section may be used at the school's discretion.

(d) Thirty-six months after receipt of funding to implement a school action plan or no sooner than July 1, 2005, a school that has not met its growth targets each year, but demonstrates significant growth, as determined by the State Board of Education, shall continue to participate in the program and receive funding as specified in Sections 52054.5 and 52055.600.

(e) Notwithstanding any other law, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall follow the course of action prescribed by paragraph (1) or (2) with respect to a school that does not meet its growth targets within the periods described in either subdivision (c) or (d), as applicable, or no later than July 1, 2005, and has failed to show significant growth, as determined by the State Board of Education.

(1) Require the district to enter into a contract with a school assistance and intervention team.

(A) Team members should possess a high degree of knowledge and skills in the areas of school leadership, curriculum, and instruction aligned to state academic content and performance standards, classroom management and discipline, academic assessment, parent-school relations, and evaluation and research-based reform strategies and have proven successful expertise specific to the challenges inherent in high-priority schools.

(B) The team shall provide intensive support and expertise to implement the school reform initiatives in the plan. Decisions about interventions shall be data driven. A school assistance and intervention team shall work with school staff, site planning teams, administrators, and district staff to improve pupil literacy and achievement by assessing the degree of implementation of the current action plan, refining and revising the action plan, and making recommendations to maximize the use of fiscal resources and personnel in achieving the goals of the plan. The district shall provide support and assistance to enhance the work of the team at the targeted schoolsites.

(C) Not later than 60 days after the school's API becomes public, the team shall complete an initial report. The report shall include recommendations for corrective actions chosen from a range of interventions, including the reallocation of district fiscal resources to

ensure that appropriate resources are targeted to those specific interventions identified in the recommendations of the team for the targeted schools and other changes deemed appropriate to make progress toward meeting the school's growth target. Not later than 90 days after the API is made public, the governing board of the school district shall adopt the team's recommendations at a regularly scheduled meeting of the governing board. The governing board may not place the adoption on the consent calendar. The report shall be submitted to the Superintendent of Public Instruction and State Board of Education.

(D) No less than three times during the year, the school district and schoolsite shall present the team with data regarding progress toward the goals established by the team's initial assessment. The data shall be presented to the governing board of the school district at a regularly scheduled meeting. The team shall, to the extent possible, utilize existing site data. The data shall also be provided to the Superintendent of Public Instruction and State Board of Education. Every effort shall be made to report this data in a manner that minimizes the length and complexity of the reporting requirement in order to maximize the focus on improving pupil literacy and achievement.

(E) An action taken pursuant to this paragraph shall not increase local costs or require reimbursement by the Commission on State Mandates.

(2) The Superintendent of Public Instruction shall assume all the legal rights, duties, and powers of the governing board with respect to the school. The Superintendent of Public Instruction, in consultation with the State Board of Education and the governing board of the school district, shall reassign the principal of that school subject to the findings in subdivision (i). In addition to reassigning the principal, the Superintendent of Public Instruction, in consultation with the State Board of Education, shall, notwithstanding any other provision of law, do at least one of the following:

(A) Revise attendance options for pupils to allow them to attend any public school in which space is available. If an additional attendance option is made available, this option may not require either the sending or receiving school district to incur additional transportation costs.

(B) Allow parents or guardians to apply directly to the State Board of Education for the establishment of a charter school and allow parents or guardians to establish the charter school at the existing schoolsite.

(C) Under the supervision of the Superintendent of Public Instruction, assign the management of the school to a college, university, county office of education, or other appropriate educational institution. However, the Superintendent of Public Instruction may not assume the management of the school.

(D) Reassign other certificated employees of the school.

(E) Renegotiate a new collective bargaining agreement at the expiration of the existing collective bargaining agreement.

(F) Reorganize the school.

(G) Close the school.

(f) In addition to the actions listed in subdivision (e), the Superintendent of Public Instruction, in consultation with the State Board of Education, may take any other action considered necessary or desirable against the school district or the school district governing board, including appointment of a new superintendent or suspension of the authority of the governing board with respect to a school that does not meet its growth targets within the periods described in either subdivision (b) or (c), as applicable, and has failed to show significant growth, as determined by the State Board of Education.

(g) Before the Superintendent of Public Instruction may take any action against a principal pursuant to subdivision (e), the Superintendent of Public Instruction or a designee of the superintendent shall hold a public hearing on the matter in the school district and make both of the following findings:

(1) A finding that the principal had the authority to take specific enumerated actions that would have helped the school meet its performance goals.

(2) A finding that the principal failed to take specific enumerated actions pursuant to paragraph (1).

(h) An action taken pursuant to subdivision (e), (f), or (g) shall not increase local costs or require reimbursement by the Commission on State Mandates.

(i) An action taken pursuant to subdivision (e), (f), or (g) shall be accompanied by specific findings by the Superintendent of Public Instruction and the State Board of Education that the action is directly related to the identified causes for continued failure by a school to meet its performance goals.

(j) (1) Notwithstanding subdivision (a), a school participating in the High Priority Schools Grant Program that received a planning grant pursuant to subdivision (f) of Section 52053 in the 1999–2000 fiscal year is eligible to receive funding pursuant to Section 52055.600 in the 2002–03 fiscal year only.

(2) Notwithstanding subdivision (a), a school participating in the High Priority Schools Grant Program that received a planning grant pursuant to subdivision (*l*) of Section 52053 in the 2000–01 fiscal year is eligible to receive funding pursuant to Section 52055.600 in the 2002–03 and 2003–04 fiscal years only.

(3) Notwithstanding subdivision (a), a school participating in the High Priority Schools Grant Program that received a planning grant pursuant to subdivision (*l*) of Section 52053 in the 2001–02 fiscal year

is eligible to receive funding pursuant to Section 52055.600 in only the 2002–03, 2003–04, and 2004–05 fiscal years.

(k) Notwithstanding the growth target timelines set forth in subdivisions (b), (c), (d), and (e), for a school that receives funds pursuant to Section 52055.600 during the 2002–03 or 2003–04 fiscal year, the growth target deadline for subdivision (b) is December 31, 2004, and the growth target deadline for subdivisions (c), (d), and (e) is December 31, 2005.

CHAPTER 758

An act to amend Sections 22706 and 22708 of the Business and Professions Code, relating to tanning facilities.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 24, 2004.]

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

SECTION 1. The Legislature finds and declares the following:

(a) The United States Food and Drug Administration (FDA) and numerous leading United States health care organizations estimate that approximately one million Americans each year will be stricken with skin cancer, a potentially deadly disease, and the most common of all types of cancers.

(b) Melanoma is more common than any nonskin cancer among women between 25 and 29 years old, and as of 2003, one in 70 Californians has a lifetime risk of developing melanoma. Nationally, one person dies of melanoma every hour.

(c) The FDA, joined by the National Institutes of Health (NIH), the United States Centers for Disease Control and Prevention (CDC), and numerous leading United States and international health care organizations, discourages the use of tanning beds and sunlamps, and has concluded that indoor tanning can be as harmful as outdoor tanning, and that perhaps more than one million people in the United States alone visit tanning salons each day on the average.

(d) The FDA and numerous leading United States and international health care organizations have expressed concerns that the consuming public generally does not know that indoor tanning devices, such as tanning beds and sunlamps, emit ultraviolet radiation, UVA and UVB, that is similar to and sometimes more powerful than the UV radiation emitted by the sun.

(e) The leading cause of skin cancers in California, including basal cell and squamous cell carcinomas and melanoma, is excessive exposure to UVA and UVB rays from both natural and artificial sources. The FDA has concluded that there are no ''safe rays'' insofar as both types of ultraviolet light cause skin cancer, damage to the eyes and the immune system, as well as wrinkling and other signs of premature skin aging.

(f) Tanning devices in salons, tanning parlors, spas, and similar settings that emit mostly UVA light are in no way less harmful alternatives to the sun's rays, insofar as UVA rays penetrate deeper than UVB rays, causing damage to the underlying connective tissue as well as to the skin's surface.

(g) Since there is currently no repair treatment available for reversing the brutal effects of UVA and UVB rays on the skin, effecting basic, minimally intrusive, public education to prevent such damage before it occurs is the best approach to maintaining the public health of the citizens of this state.

(h) It is in the public interest to exercise the state's public education capabilities to warn the public of the risks of UVA radiation exposure by skin tanning units or devices, to endorse the findings released by the FDA warning Americans that the use of UVA tanning booths and sun beds pose potentially significant health risks to users, and to adopt legislation regarding UVA exposure to ensure the posting of warnings of these risks in commercial tanning salons, parlors, and spas.

SEC. 2. Section 22706 of the Business and Professions Code is amended to read:

22706. (a) A tanning facility shall:

(1) Have an operator present during operating hours who is sufficiently knowledgeable in the correct operation of the tanning devices used at the facility so that he or she is able to inform and assist each customer in the proper use of the tanning devices.

(2) Before each use of a tanning device, provide each customer with properly sanitized protective eyewear that protects the eye from ultraviolet radiation and allows adequate vision to maintain balance; and not allow a person to use a tanning device if that person does not use the protective eyewear.

(3) Show each customer how to use suitable physical aids, such as handrails and markings on the floor, to maintain proper exposure distance as recommended by the manufacturer.

(4) Use a timer that has an accuracy of plus or minus 10 percent of any selected timer interval.

(5) Limit each customer to the maximum exposure time as recommended by the manufacturer.

(6) Control the interior temperature of a tanning facility so that it does not exceed 100 degrees Fahrenheit.

(b) (1) Every person who uses a tanning facility shall sign a written statement acknowledging that he or she has read and understood the warnings before using the device; and agrees to use the protective eyewear that the tanning facility provides. The statement of acknowledgment shall be retained by the tanning facility until the end of the calendar year at which time each person who is a current customer of the facility shall be required to renew that acknowledgment.

(2) Whenever using a tanning device a person shall use the protective eyewear that the tanning facility provides.

(3) Before any person between 14 and 18 years of age uses a tanning device, he or she shall give the tanning facility a statement signed by his or her parent or legal guardian stating that the parent or legal guardian has read and understood the warnings given by the tanning facility, consents to the minor's use of a tanning device, and agrees that the minor will use the protective eyewear that the tanning facility provides.

(4) Persons under 14 years of age are prohibited from using a tanning device.

SEC. 3. Section 22708 of the Business and Professions Code is amended to read:

22708. (a) A first violation of this chapter is an infraction. Each day a first violation continues constitutes a separate infraction.

(b) Any violation of this chapter subsequent to a first violation is a misdemeanor. Each day a subsequent violation continues constitutes a separate misdemeanor.

(c) A tanning facility that has violated this chapter shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) per day in addition to any other penalty established by law.

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 759

An act to add Section 451.5 to the Public Utilities Code, relating to public utilities.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 24, 2004.]

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

SECTION 1. Section 451.5 is added to the Public Utilities Code, to read:

451.5. (a) Any expense resulting from a bonus paid to an executive officer of a public utility that has ceased to pay its debts in the ordinary course of business shall not be recoverable either directly or indirectly in rates and shall be borne exclusively by the shareholders of the public utility. This prohibition shall be operative for a period of no less than two years after the public utility resumes paying its debts in the ordinary course of business, and shall be operative for any additional time period as determined by the commission.

(b) The requirements of subdivision (a) do not apply to a bonus that is specifically defined in a standard employee compensation contract.

(c) For purposes of this section, ''executive officer'' means any person who performs policy making functions and is employed by the public utility subject to the approval of the board of directors, and includes the president, secretary, treasurer, and any vice president in charge of a principal business unit, division, or function of the public utility.

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 760

An act to add Section 13082 to the Financial Code, relating to point-of-sale devices.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 24, 2004.]

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

SECTION 1. It is the intent of the Legislature to stop the expansion of point-of-sale devices that do not allow a blind or visually impaired person to enter his or her own personal identification number or any

other personal information necessary to process a transaction with the same degree of privacy given to all other individuals.

SEC. 2. Section 13082 is added to the Financial Code, to read:

13082. (a) Whenever a point-of-sale system is changed or modified to include a video touch screen or any other nontactile keypad, the point-of-sale device that would include the video touch screen or nontactile keypad shall also be equipped with a tactually discernible numerical keypad similar to a telephone keypad containing a raised dot with a dot base diameter between 1.5 millimeters and 1.6 millimeters and a height between 0.6 millimeters and 0.9 millimeters on the number 5 key that enables a visually impaired person to enter his or her own personal identification number or any other personal information necessary to process the transaction in a manner which provides the opportunity for the same degree of privacy input and output available to all individuals.

(b) (1) On or before January 1, 2010, any existing point-of-sale system, except as provided in paragraph (2), that includes a video touch screen or any other nontactile keypad shall also be equipped with a tactually discernable keypad as described in subdivision (a).

(2) At locations equipped with two or less point-of-sale machines, only one point-of-sale machine shall be required to be equipped with a tactually discernible keypad on or before January 1, 2010, as described in subdivision (a).

(c) On and after January 1, 2006, a manufacturer or distributor shall be required to offer for availability touch screen or other nontactile point-of-sale devices to be used and sold in this state that are equipped with tactually discernible keypads as described in subdivision (a) that enable a visually impaired person to enter his or her own personal identification number or any other personal information necessary to process a transaction in a manner that ensures personal privacy of the information being entered.

(d) As used in this section, ''point-of-sale device'' includes any device used by a customer for the purchase of a good or service where a personal identification number (PIN) is required, but does not include the following:

(1) An automated teller machine as defined in subdivision (c) of Section 13020.

(2) A point-of-sale device that is equipped to, or exclusively services, motor fuel dispensers.

(e) This section shall not be construed to preclude or limit any other existing right or remedy as it pertains to point-of-sale devices and accessibility.

CHAPTER 761

An act to amend Section 290 of the Penal Code, relating to sex offenders.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 24, 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, or, if he or she has no residence, while located within California, or while attending school or working in California, as described in subparagraph (G), shall be required to register with the chief of police of the city in which he or she is residing, or if he or she has no residence, is located, or the sheriff of the county if he or she is residing, or if he or she has no residence, is located, in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing, or if he or she has no residence, is located upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence or location within, any city, county, or city and county, or campus in which he or she temporarily resides, or, if he or she has no residence, is located.

(B) If the person who is registering has more than one residence address or location at which he or she regularly resides or is located, he or she shall register in accordance with subparagraph (A) in each of the jurisdictions in which he or she regularly resides or is located. If all of the addresses or locations are within the same jurisdiction, the person shall provide the registering authority with all of the addresses or locations where he or she regularly resides or is located.

(C) If the person who is registering has no residence address, he or she shall update his or her registration no less than once every 60 days in addition to the requirement in subparagraph (A), on a form as may be required by the Department of Justice, with the entity or entities described in subparagraph (A) in whose jurisdiction he or she is located at the time he or she is updating the registration.

(D) Beginning on his or her first birthday following registration or change of address, the person shall be required to register annually, within five working days of his or her birthday, to update his or her registration with the entities described in subparagraph (A). At the annual update, the person shall provide current information as required on the Department of Justice annual update form, including the

information described in subparagraphs (A) to (C), inclusive, of paragraph (2) of subdivision (e).

(E) In addition, every person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, shall, after his or her release from custody, verify his or her address no less than once every 90 days and place of employment, including the name and address of the employer, in a manner established by the Department of Justice.

(F) No entity shall require a person to pay a fee to register or update his or her registration pursuant to this section. The registering agency shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN).

(G) Persons required to register in their state of residence who are out-of-state residents employed, or carrying on a vocation in California on a full-time or part-time basis, with or without compensation, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, shall register in accordance with subparagraph (A). Persons described in paragraph (2) who are out-of-state residents enrolled in any educational institution in California, as defined in Section 22129 of the Education Code, on a full-time or part-time basis, shall register in accordance with subparagraph (A). The place where the out-of-state resident is located, for purposes of registration, shall be the place where the person is employed, carrying on a vocation, or attending school. The out-of-state resident subject to this subparagraph shall, in addition to the information required pursuant to subdivision (e), provide the registering authority with the name of his or her place of employment or the name of the school attended in California, and his or her address or location in his or her state of residence. The registration requirement for persons subject to this subparagraph shall become operative on November 25, 2000. The terms ''employed or carries on a vocation'' include employment whether or not financially compensated, volunteered, or performed for government or educational benefit.

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, 266j, 267, 269, 285,

286, 288, 288a, 288.5, or 289, Section 311.1, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; or any statutory predecessor that includes all elements of one of the above-mentioned offenses; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses.

(B) Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in subparagraph (A).

(C) Any person who, since July 1, 1944, has been or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code or any person who has been found guilty in the guilt phase of a trial for an offense for which registration is required by this section but who has been found not guilty by reason of insanity in the sanity phase of the trial.

(D) (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 day he or she is allowed to register.

(3) Within three days thereafter, the preregistering official or the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the Department of Justice.

(f) (1) If any person who is required to register pursuant to this section changes his or her residence address or location, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state, the person shall inform, in writing within five working days, the law enforcement agency or agencies with which he or she last registered of the new address or location. The law enforcement agency or agencies shall, within three working days after receipt of this information, forward a copy of the change of address or location information to the Department of Justice. The Department of

Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence or location.

(2) If the person's new address is in a Department of the Youth Authority facility or a state prison or state mental institution, an official of the place of incarceration, placement, or commitment shall, within 90 days of receipt of the person, forward the registrant's change of address information to the Department of Justice. The agency need not provide a physical address for the registrant but shall indicate that he or she is serving a period of incarceration or commitment in a facility under the agency's jurisdiction. This paragraph shall apply to persons received in a Department of the Youth Authority facility or a state prison or state mental institution on or after January 1, 1999. The Department of Justice shall forward the change of address information to the agency with which the person last registered.

(3) If any person who is required to register pursuant to this section changes his or her name, the person shall inform, in person, the law enforcement agency or agencies with which he or she is currently registered within five working days. The law enforcement agency or agencies shall forward a copy of this information to the Department of Justice within three working days of its receipt.

(g) (1) Any person who is required to register under this section based on a misdemeanor conviction or juvenile adjudication who willfully violates any requirement of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

(2) Except as provided in paragraphs (5) and (7), any person who is required to register under this section based on a felony conviction or juvenile adjudication who willfully violates any requirement of this section or who has a prior conviction or juvenile adjudication for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

If probation is granted or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the person serve at least 90 days in a county jail. The penalty described in this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.

(3) Any person determined to be a mentally disordered sex offender or who has been found guilty in the guilt phase of trial for an offense for which registration is required under this section, but who has been found not guilty by reason of insanity in the sanity phase of the trial, or who has had a petition sustained in a juvenile adjudication for an offense for

which registration is required under this section pursuant to subdivision (d), but who has been found not guilty by reason of insanity, who willfully violates any requirement of this section is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding one year. For any second or subsequent willful violation of any requirement of this section, the person is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

(4) If, after discharge from parole, the person is convicted of a felony or suffers a juvenile adjudication as specified in this subdivision, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed under this subdivision. A person convicted of a felony as specified in this subdivision may be granted probation only in the unusual case where the interests of justice would best be served. When probation is granted under this paragraph, the court shall specify on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

(5) Any person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, and who fails to verify his or her registration every 90 days as required pursuant to subparagraph (E) of paragraph (1) of subdivision (a), shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

(6) Except as otherwise provided in paragraph (5), and in addition to any other penalty imposed under this subdivision, any person who is required pursuant to subparagraph (C) of paragraph (1) of subdivision (a) to update his or her registration every 60 days and willfully fails to update his or her registration is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. Any subsequent violation of this requirement that persons described in subparagraph (C) of paragraph (1) of subdivision (a) shall update their registration every 60 days is also a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months.

(7) Any person who fails to provide proof of residence as required by subparagraph (E) of paragraph (2) of subdivision (e), regardless of the offense upon which the duty to register is based, is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months.

(8) Any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense.

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time

prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, ''parole authority'' has the same meaning as described in Section 3000.

(i) Except as provided in Sections 290.4 and 290.45, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This subdivision shall not apply to any person who is temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, ''mentally disordered sex offender'' includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(*l*) (1) Every person who, prior to January 1, 1997, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 14 to 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 crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in this section, regardless of when it was committed.

SEC. 1.1. Section 290 of the Penal Code is amended to read:

290. (a) (1) (A) Every person described in paragraph (2), for the rest of his or her life while residing in, 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 or locations 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 at 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 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. 1.2. Section 290 of the Penal Code is amended to read:

290. (a) (1) (A) Every person described in paragraph (2), for the rest of his or her life while residing in, or, if he or she has no residence, while located within California, or while attending school or working in California, as described in subparagraph (G), shall be required to register with the chief of police of the city in which he or she is residing, or if he or she has no residence, is located, or the sheriff of the county if he or she is residing, or if he or she has no residence, is located, in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing, or if he or she has no residence, is located upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence or location within, any city, county, or city and county, or campus in which he or she temporarily resides, or, if he or she has no residence, is located.

(B) If the person who is registering has more than one residence address or location at which he or she regularly resides or is located, he or she shall register in accordance with subparagraph (A) in each of the jurisdictions in which he or she regularly resides or is located, regardless of the number of days or nights spent there. If all of the addresses or locations are within the same jurisdiction, the person shall provide the

registering authority with all of the addresses or locations where he or she regularly resides or is located.

(C) If the person who is registering has no residence address, he or she shall update his or her registration no less than once every 60 days in addition to the requirement in subparagraph (A), on a form as may be required by the Department of Justice, with the entity or entities described in subparagraph (A) in whose jurisdiction he or she is located at the time he or she is updating the registration.

(D) Beginning on his or her first birthday following registration or change of address, the person shall be required to register annually, within five working days of his or her birthday, to update his or her registration with the entities described in subparagraph (A). At the annual update, the person shall provide current information as required on the Department of Justice annual update form, including the information described in subparagraphs (A) to (C), inclusive, of paragraph (2) of subdivision (e).

(E) In addition, every person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, shall, after his or her release from custody, verify his or her address no less than once every 90 days and place of employment, including the name and address of the employer, in a manner established by the Department of Justice.

(F) No entity shall require a person to pay a fee to register or update his or her registration pursuant to this section. The registering agency shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN).

(G) Persons required to register in their state of residence who are out-of-state residents employed, or carrying on a vocation in California on a full-time or part-time basis, with or without compensation, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, shall register in accordance with subparagraph (A). Persons described in paragraph (2) who are out-of-state residents enrolled in any educational institution in California, as defined in Section 22129 of the Education Code, on a full-time or part-time basis, shall register in accordance with subparagraph (A). The place where the out-of-state resident is located, for purposes of registration, shall be the place where the person is employed, carrying on a vocation, or attending school. The out-of-state resident subject to this subparagraph shall, in addition to the information required pursuant to subdivision (e), provide the registering authority with the name of his or her place of employment or the name of the school attended in California, and his or her address or location in his or her state of residence. The registration requirement for persons subject to this subparagraph shall become operative on November 25,

2000. The terms ''employed or carries on a vocation'' include employment whether or not financially compensated, volunteered, or performed for government or educational benefit.

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, 266j, 267, 269, 285, 286, 288, 288a, 288.5, or 289, Section 311.1, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; or any statutory predecessor that includes all elements of one of the above-mentioned offenses; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses.

(B) Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in subparagraph (A).

(C) Any person who, since July 1, 1944, has been or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code or any person who has been found guilty in the guilt phase of a trial for an offense for which registration is required by this section but who has been found not guilty by reason of insanity in the sanity phase of the trial.

(D) (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, 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 day he or she is allowed to register.

(3) Within three days thereafter, the preregistering official or the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the Department of Justice.

(f) (1) If any person who is required to register pursuant to this section changes his or her residence address or location, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state, the person shall inform, in writing within five working days, the law enforcement agency or agencies with which he or she last registered of the new address or location. If the person does not know the new residence address or location, 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 or location within five working days of moving into the new residence address or location, 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 or location information to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence or location.

(2) If the person's new address is in a Department of the Youth Authority facility or a state prison or state mental institution, an official of the place of incarceration, placement, or commitment shall, within 90 days of receipt of the person, forward the registrant's change of address information to the Department of Justice. The agency need not provide a physical address for the registrant but shall indicate that he or she is serving a period of incarceration or commitment in a facility under the agency's jurisdiction. This paragraph shall apply to persons received in a Department of the Youth Authority facility or a state prison or state mental institution on or after January 1, 1999. The Department of Justice shall forward the change of address information to the agency with which the person last registered.

(3) If any person who is required to register pursuant to this section changes his or her name, the person shall inform, in person, the law enforcement agency or agencies with which he or she is currently registered within five working days. The law enforcement agency or agencies shall forward a copy of this information to the Department of Justice within three working days of its receipt.

(g) (1) Any person who is required to register under this section based on a misdemeanor conviction or juvenile adjudication who

willfully violates any requirement of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

(2) Except as provided in paragraphs (5) and (7), any person who is required to register under this section based on a felony conviction or juvenile adjudication who willfully violates any requirement of this section or who has a prior conviction or juvenile adjudication for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

If probation is granted or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the person serve at least 90 days in a county jail. The penalty described in this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.

(3) Any person determined to be a mentally disordered sex offender or who has been found guilty in the guilt phase of trial for an offense for which registration is required under this section, but who has been found not guilty by reason of insanity in the sanity phase of the trial, or who has had a petition sustained in a juvenile adjudication for an offense for which registration is required under this section pursuant to subdivision (d), but who has been found not guilty by reason of insanity, who willfully violates any requirement of this section is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding one year. For any second or subsequent willful violation of any requirement of this section, the person is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

(4) If, after discharge from parole, the person is convicted of a felony or suffers a juvenile adjudication as specified in this subdivision, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed under this subdivision. A person convicted of a felony as specified in this subdivision may be granted probation only in the unusual case where the interests of justice would best be served. When probation is granted under this paragraph, the court shall specify on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

(5) Any person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, and who fails to verify his or her registration every 90 days as required pursuant to subparagraph (E) of paragraph (1) of subdivision

(a), shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

(6) Except as otherwise provided in paragraph (5), and in addition to any other penalty imposed under this subdivision, any person who is required pursuant to subparagraph (C) of paragraph (1) of subdivision (a) to update his or her registration every 60 days and willfully fails to update his or her registration is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. Any subsequent violation of this requirement that persons described in subparagraph (C) of paragraph (1) of subdivision (a) shall update their registration every 60 days is also a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months.

(7) Any person who fails to provide proof of residence as required by subparagraph (E) of paragraph (2) of subdivision (e), regardless of the offense upon which the duty to register is based, is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months.

(8) Any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense as to each requirement he or she violated.

(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 five working days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 14 days.

(2) Every person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, is required to verify his or her registration every 90 days, shall be notified wherever he or she next registers of his or her increased registration obligations. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notice shall be a defense against the penalties prescribed by paragraph (5) of subdivision (g).

(m) The registration provisions of this section are applicable to every person described in this section, without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in this section, regardless of when it was committed.

SEC. 1.3. Section 290 of the Penal Code is amended to read:

290. (a) (1) (A) Every person described in paragraph (2), for the rest of his or her life while residing in 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 is located, in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing 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 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 at 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 or 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 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, 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 or location, 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 or location within five working days of moving into the new residence address or location, 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 of (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) of (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. (a) Section 1.1 of this bill incorporates amendments to Section 290 of the Penal Code proposed by both this bill and AB 2527. 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 2527, in which case Sections 1, 1.2, and 1.3 of this bill shall not become operative.

(b) Section 1.2 of this bill incorporates amendments to Section 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 2527 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, 1.1, and 1.3 of this bill shall not become operative.

(c) Section 1.3 of this bill incorporates amendments to Section 290 of the Penal Code proposed by this bill, AB 2527, 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 2527, and SB 1289, in which case Sections 1, 1.1, and 1.2 of this bill shall not become operative.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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 762

An act to amend Sections 11165.7 and 11166.5 of the Penal Code, relating to child abuse reporting.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 24, 2004.]

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

SECTION 1. Section 11165.7 of the Penal Code is amended to read:

11165.7. (a) As used in this article, "mandated reporter" is defined as any of the following:

(1) A teacher.

(2) An instructional aide.

(3) A teacher's aide or teacher's assistant employed by any public or private school.

(4) A classified employee of any public school.

(5) An administrative officer or supervisor of child welfare and attendance, or a certificated pupil personnel employee of any public or private school.

(6) An administrator of a public or private day camp.

(7) An administrator or employee of a public or private youth center, youth recreation program, or youth organization.

(8) An administrator or employee of a public or private organization whose duties require direct contact and supervision of children.

(9) Any employee of a county office of education or the California Department of Education, whose duties bring the employee into contact with children on a regular basis.

(10) A licensee, an administrator, or an employee of a licensed community care or child day care facility.

(11) A headstart teacher.

(12) A licensing worker or licensing evaluator employed by a licensing agency as defined in Section 11165.11.

(13) A public assistance worker.

(14) An employee of a child care institution, including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities.

(15) A social worker, probation officer, or parole officer.

(16) An employee of a school district police or security department.

(17) Any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school.

(18) A district attorney investigator, inspector, or local child support agency caseworker unless the investigator, inspector, or caseworker is

working with an attorney appointed pursuant to Section 317 of the Welfare and Institutions Code to represent a minor.

(19) A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, who is not otherwise described in this section.

(20) A firefighter, except for volunteer firefighters.

(21) A physician, surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, marriage, family and child counselor, clinical social worker, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

(22) Any emergency medical technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(23) A psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.

(24) A marriage, family and child therapist trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code.

(25) An unlicensed marriage, family, and child therapist intern registered under Section 4980.44 of the Business and Professions Code.

(26) A state or county public health employee who treats a minor for venereal disease or any other condition.

(27) A coroner.

(28) A medical examiner, or any other person who performs autopsies.

(29) A commercial film and photographic print processor, as specified in subdivision (e) of Section 11166. As used in this article, ''commercial film and photographic print processor'' means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.

(30) A child visitation monitor. As used in this article, ''child visitation monitor'' means any person who, for financial compensation, acts as monitor of a visit between a child and any other person when the monitoring of that visit has been ordered by a court of law.

(31) An animal control officer or humane society officer. For the purposes of this article, the following terms have the following meanings:

(A) ''Animal control officer'' means any person employed by a city, county, or city and county for the purpose of enforcing animal control laws or regulations.

(B) ''Humane society officer'' means any person appointed or employed by a public or private entity as a humane officer who is qualified pursuant to Section 14502 or 14503 of the Corporations Code.

(32) A clergy member, as specified in subdivision (c) of Section 11166. As used in this article, ''clergy member'' means a priest, minister, rabbi, religious practitioner, or similar functionary of a church, temple, or recognized denomination or organization.

(33) Any custodian of records of a clergy member, as specified in this section and subdivision (c) of Section 11166.

(34) Any employee of any police department, county sheriff's department, county probation department, or county welfare department.

(35) An employee or volunteer of a Court Appointed Special Advocate program, as defined in Rule 1424 of the Rules of Court.

(36) A custodial officer as defined in Section 831.5.

(37) Any person providing services to a minor child under Section 12300 or 12300.1 of the Welfare and Institutions Code.

(b) Volunteers of public or private organizations whose duties require direct contact and supervision of children are encouraged to obtain training in the identification and reporting of child abuse.

(c) Training in the duties imposed by this article shall include training in child abuse identification and training in child abuse reporting. As part of that training, school districts shall provide to all employees being trained a written copy of the reporting requirements and a written disclosure of the employees' confidentiality rights.

(d) School districts that do not train their employees specified in subdivision (a) in the duties of mandated reporters under the child abuse reporting laws shall report to the State Department of Education the reasons why this training is not provided.

(e) Unless otherwise specifically provided, the absence of training shall not excuse a mandated reporter from the duties imposed by this article.

SEC. 1.5. Section 11165.7 of the Penal Code is amended to read:

11165.7. (a) As used in this article, ''mandated reporter'' is defined as any of the following:

(1) A teacher.

(2) An instructional aide.

(3) A teacher's aide or teacher's assistant employed by any public or private school.

(4) A classified employee of any public school.

(5) An administrative officer or supervisor of child welfare and attendance, or a certificated pupil personnel employee of any public or private school.

(6) An administrator of a public or private day camp.

(7) An administrator or employee of a public or private youth center, youth recreation program, or youth organization.

(8) An administrator or employee of a public or private organization whose duties require direct contact and supervision of children.

(9) Any employee of a county office of education or the California Department of Education, whose duties bring the employee into contact with children on a regular basis.

(10) A licensee, an administrator, or an employee of a licensed community care or child day care facility.

(11) A Head Start Program teacher.

(12) A licensing worker or licensing evaluator employed by a licensing agency as defined in Section 11165.11.

(13) A public assistance worker.

(14) An employee of a child care institution, including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities.

(15) A social worker, probation officer, or parole officer.

(16) An employee of a school district police or security department.

(17) Any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school.

(18) A district attorney investigator, inspector, or local child support agency caseworker unless the investigator, inspector, or caseworker is working with an attorney appointed pursuant to Section 317 of the Welfare and Institutions Code to represent a minor.

(19) A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, who is not otherwise described in this section.

(20) A firefighter, except for volunteer firefighters.

(21) A physician, surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, marriage, family and child counselor, clinical social worker, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

(22) Any emergency medical technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(23) A psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.

(24) A marriage, family and child therapist trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code.

(25) An unlicensed marriage, family, and child therapist intern registered under Section 4980.44 of the Business and Professions Code.

(26) A state or county public health employee who treats a minor for venereal disease or any other condition.

(27) A coroner.

(28) A medical examiner, or any other person who performs autopsies.

(29) A commercial film and photographic print processor, as specified in subdivision (d) of Section 11166. As used in this article, ''commercial film and photographic print processor'' means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.

(30) A child visitation monitor. As used in this article, ''child visitation monitor'' means any person who, for financial compensation, acts as monitor of a visit between a child and any other person when the monitoring of that visit has been ordered by a court of law.

(31) An animal control officer or humane society officer. For the purposes of this article, the following terms have the following meanings:

(A) ''Animal control officer'' means any person employed by a city, county, or city and county for the purpose of enforcing animal control laws or regulations.

(B) ''Humane society officer'' means any person appointed or employed by a public or private entity as a humane officer who is qualified pursuant to Section 14502 or 14503 of the Corporations Code.

(32) A clergy member, as specified in subdivision (c) of Section 11166. As used in this article, ''clergy member'' means a priest, minister, rabbi, religious practitioner, or similar functionary of a church, temple, or recognized denomination or organization.

(33) Any custodian of records of a clergy member, as specified in this section and subdivision (c) of Section 11166.

(34) Any employee of any police department, county sheriff's department, county probation department, or county welfare department.

(35) An employee or volunteer of a Court Appointed Special Advocate program, as defined in Rule 1424 of the California Rules of Court.

(36) A custodial officer as defined in Section 831.5.

(37) Any person providing services to a minor child under Section 12300 or 12300.1 of the Welfare and Institutions Code.

(b) Except as provided in paragraph (35) of subdivision (a), volunteers of public or private organizations whose duties require direct

contact with and supervision of children are not mandated reporters but are encouraged to obtain training in the identification and reporting of child abuse and neglect and are further encouraged to report known or suspected instances of child abuse or neglect to an agency specified in Section 11165.9.

(c) Employers are strongly encouraged to provide their employees who are mandated reporters with training in the duties imposed by this article. This training shall include training in child abuse and neglect identification and training in child abuse and neglect reporting. Whether or not employers provide their employees with training in child abuse and neglect identification and reporting, the employers shall provide their employees who are mandated reporters with the statement required pursuant to subdivision (a) of Section 11166.5.

(d) School districts that do not train their employees specified in subdivision (a) in the duties of mandated reporters under the child abuse reporting laws shall report to the State Department of Education the reasons why this training is not provided.

(e) Unless otherwise specifically provided, the absence of training shall not excuse a mandated reporter from the duties imposed by this article.

(f) Public and private organizations are encouraged to provide their volunteers whose duties require direct contact with and supervision of children with training in the identification and reporting of child abuse and neglect.

SEC. 2. Section 11166.5 of the Penal Code is amended to read:

11166.5. (a) On and after January 1, 1985, any mandated reporter as specified in Section 11165.7, with the exception of child visitation monitors, prior to commencing his or her employment, and as a prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions. The statement shall inform the employee that he or she is a mandated reporter and inform the employee of his or her reporting obligations under Section 11166. The employer shall provide a copy of Sections 11165.7 and 11166 to the employee.

On and after January 1, 1993, any person who acts as a child visitation monitor, as defined in paragraph (30) of subdivision (a) of Section 11165.7, prior to engaging in monitoring the first visit in a case, shall sign a statement on a form provided to him or her by the court which ordered the presence of that third person during the visit, to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions.

The signed statements shall be retained by the employer or the court, as the case may be. The cost of printing, distribution, and filing of these statements shall be borne by the employer or the court.

This subdivision is not applicable to persons employed by public or private youth centers, youth recreation programs, and youth organizations as members of the support staff or maintenance staff and who do not work with, observe, or have knowledge of children as part of their official duties.

(b) On and after January 1, 1986, when a person is issued a state license or certificate to engage in a profession or occupation, the members of which are required to make a report pursuant to Section 11166, the state agency issuing the license or certificate shall send a statement substantially similar to the one contained in subdivision (a) to the person at the same time as it transmits the document indicating licensure or certification to the person. In addition to the requirements contained in subdivision (a), the statement also shall indicate that failure to comply with the requirements of Section 11166 is a misdemeanor, punishable by up to six months in a county jail, by a fine of one thousand dollars ($1,000), or by both that imprisonment and fine.

(c) As an alternative to the procedure required by subdivision (b), a state agency may cause the required statement to be printed on all application forms for a license or certificate printed on or after January 1, 1986.

(d) On and after January 1, 1993, any child visitation monitor, as defined in paragraph (30) of subdivision (a) of Section 11165.7, who desires to act in that capacity shall have received training in the duties imposed by this article, including training in child abuse identification and child abuse reporting. The person, prior to engaging in monitoring the first visit in a case, shall sign a statement on a form provided to him or her by the court which ordered the presence of that third person during the visit, to the effect that he or she has received this training. This statement may be included in the statement required by subdivision (a) or it may be a separate statement. This statement shall be filed, along with the statement required by subdivision (a), in the court file of the case for which the visitation monitoring is being provided.

(e) Any person providing services to a minor child, as described in paragraph (37) of subdivision (a) of Section 11165.7, shall not be required to make a report pursuant to Section 11166 unless that person has received training, or instructional materials in the appropriate language, on the duties imposed by this article, including identifying and reporting child abuse or neglect.

SEC. 2.5. Section 11166.5 of the Penal Code is amended to read:

11166.5. (a) On and after January 1, 1985, any mandated reporter as specified in Section 11165.7, with the exception of child visitation

monitors, prior to commencing his or her employment, and as a prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions. The statement shall inform the employee that he or she is a mandated reporter and inform the employee of his or her reporting obligations under Section 11166 and of his or her confidentiality rights under subdivision (d) of Section 11167. The employer shall provide a copy of Sections 11165.7, 11166, and 11167 to the employee.

On and after January 1, 1993, any person who acts as a child visitation monitor, as defined in paragraph (30) of subdivision (a) of Section 11165.7, prior to engaging in monitoring the first visit in a case, shall sign a statement on a form provided to him or her by the court which ordered the presence of that third person during the visit, to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions.

The signed statements shall be retained by the employer or the court, as the case may be. The cost of printing, distribution, and filing of these statements shall be borne by the employer or the court.

This subdivision is not applicable to persons employed by public or private youth centers, youth recreation programs, and youth organizations as members of the support staff or maintenance staff and who do not work with, observe, or have knowledge of children as part of their official duties.

(b) On and after January 1, 1986, when a person is issued a state license or certificate to engage in a profession or occupation, the members of which are required to make a report pursuant to Section 11166, the state agency issuing the license or certificate shall send a statement substantially similar to the one contained in subdivision (a) to the person at the same time as it transmits the document indicating licensure or certification to the person. In addition to the requirements contained in subdivision (a), the statement also shall indicate that failure to comply with the requirements of Section 11166 is a misdemeanor, punishable by up to six months in a county jail, by a fine of one thousand dollars ($1,000), or by both that imprisonment and fine.

(c) As an alternative to the procedure required by subdivision (b), a state agency may cause the required statement to be printed on all application forms for a license or certificate printed on or after January 1, 1986.

(d) On and after January 1, 1993, any child visitation monitor, as defined in paragraph (30) of subdivision (a) of Section 11165.7, who desires to act in that capacity shall have received training in the duties imposed by this article, including training in child abuse identification and child abuse reporting. The person, prior to engaging in monitoring

the first visit in a case, shall sign a statement on a form provided to him or her by the court which ordered the presence of that third person during the visit, to the effect that he or she has received this training. This statement may be included in the statement required by subdivision (a) or it may be a separate statement. This statement shall be filed, along with the statement required by subdivision (a), in the court file of the case for which the visitation monitoring is being provided.

(e) Any person providing services to a minor child, as described in paragraph (37) of subdivision (a) of Section 11165.7, shall not be required to make a report pursuant to Section 11166 unless that person has received training, or instructional materials in the appropriate language, on the duties imposed by this article, including identifying and reporting child abuse or neglect.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 11165.7 of the Penal Code proposed by both this bill and SB 1313. 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 11165.7 of the Penal Code, and (3) this bill is enacted after SB 1313, in which case Section 1 of this bill shall not become operative.

SEC. 4. Section 2.5 of this bill incorporates amendments to Section 11165.7 of the Penal Code proposed by both this bill and SB 1313. 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 11165.7 of the Penal Code, and (3) this bill is enacted after SB 1313, in which case Section 2 of this bill shall not become operative.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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 763

An act to add and repeal Section 13998.5a of the Government Code, relating to military base retention, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 24, 2004.]

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

SECTION 1. Section 13998.5a is added to the Government Code, to read:

13998.5a. (a) The updated plan as provided in subdivision (e) of Section 13998.5 shall include identification of whether other military installations or missions located in other states could be recruited to California.

(b) The office shall submit to the Governor and the Legislature an updated strategic plan pursuant to Section 13998.5 specific to the federal BRAC 2005 process by November 30, 2004.

SEC. 2. This act shall become operative if Senate Bill 926 of the 2003–04 Regular Session is chaptered and becomes operative.

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 immediate assistance to local communities that are involved with base closure or realignment efforts, and to ensure that the Legislature and the Governor receive the plan required by this bill on a timely basis, so that actions can be taken to assess the status of California's defense installations in advance of the next round of federal base closures scheduled for 2005, it is necessary that this act take effect immediately.

CHAPTER 764

An act to amend Section 72410 of, to amend, repeal, and add Sections 72400, 72421, 72430, and 72440 of, and to add and repeal Section 72425 of, the Public Resources Code, relating to vessels.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 24, 2004.]

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

SECTION 1. Section 72400 of the Public Resources Code is amended to read:

72400. (a) The Legislature finds and declares that the protection and enhancement of the quality of the marine waters of the state and marine sanctuaries requires that the release from large passenger vessels of sewage sludge and oily bilgewater, into the marine waters of the state and marine sanctuaries, should be prohibited.

(b) The Legislature finds and declares that the protection and enhancement of the quality of the marine waters of the state requires that the release of sewage from large passenger vessels into the marine waters of the state should be prohibited.

(c) The Legislature intends to request the Congress of the United States to amend the Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 and following) to provide California with authority similar to that granted to the State of Alaska by Public Law 106-554, to regulate the release of sewage from large passenger vessels in the marine waters of the state.

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

SEC. 1.5. Section 72400 is added to the Public Resources Code, to read:

72400. (a) The Legislature finds and declares that the protection and enhancement of the quality of the marine waters of the state and marine sanctuaries requires that the release from large passenger vessels of sewage sludge and oily bilgewater, into the marine waters of the state and marine sanctuaries, should be prohibited.

(b) This section shall become operative on January 1, 2010.

SEC. 2. Section 72410 of the Public Resources Code is amended to read:

72410. (a) Unless the context otherwise requires, the definitions set forth in this section govern this division.

(b) ''Board'' means the State Water Resources Control Board.

(c) ''Large passenger vessel'' or ''vessel'' means a vessel of 300 gross registered tons or greater that is engaged in the carrying of passengers for hire, excluding all of the following vessels:

(1) Vessels without berths or overnight accommodations for passengers.

(2) Noncommercial vessels, warships, vessels operated by nonprofit entities as determined by the Internal Revenue Service, and vessels operated by the state, the United States, or a foreign government.

(d) ''Marine waters of the state'' means ''coastal waters'' as defined in Section 13181 of the Water Code.

(e) ''Marine sanctuary'' means marine waters of the state in the Channel Islands National Marine Sanctuary, Cordell Bank National Marine Sanctuary, Gulf of the Farallones National Marine Sanctuary, or Monterey Bay National Marine Sanctuary.

(f) ''Oil'' has the meaning set forth in Section 8750.

(g) ''Oily bilgewater'' includes bilgewater that contains used lubrication oils, oil sludge and slops, fuel and oil sludge, used oil, used fuel and fuel filters, and oily waste.

(h) ''Operator'' has the meaning set forth in Section 651 of the Harbors and Navigation Code.

(i) ''Owner'' has the meaning set forth in Section 651 of the Harbors and Navigation Code.

(j) ''Release'' means discharging or disposing of wastes into the environment.

(k) ''Sewage'' has the meaning set forth in Section 775.5 of the Harbors and Navigation Code, including material that has been collected or treated through a marine sanitation device as that term is used in Section 312 of the Clean Water Act (33 U.S.C. Sec. 1322) or material that is a byproduct of sewage treatment.

(*l*) ''Sewage sludge'' has the meaning set forth in Section 122.2 of Title 40 of the Code of Federal Regulations.

SEC. 3. Section 72421 of the Public Resources Code is amended to read:

72421. (a) If a large passenger vessel releases sewage sludge, sewage, or oily bilgewater into the marine waters of the state or a marine sanctuary, the owner or operator shall immediately, but no later than 24 hours after the release, notify the board of the release. The owner or operator shall include all of the following information in the notification:

(1) Date of the release.

(2) Time of the release.

(3) Location of the release.

(4) Volume of the release.

(5) Source of the release.

(6) Remedial actions taken to prevent future releases.

(b) 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. 4. Section 72421 is added to the Public Resources Code, to read:

72421. (a) If a large passenger vessel releases sewage sludge or oily bilgewater into the marine waters of the state or a marine sanctuary, the owner or operator shall immediately, but no later than 24 hours after the

release, notify the board of the release. The owner or operator shall include all of the following information in the notification:

(1) Date of the release.

(2) Time of the release.

(3) Location of the release.

(4) Volume of the release.

(5) Source of the release.

(6) Remedial actions taken to prevent future releases.

(b) This section shall become operative on January 1, 2010.

SEC. 5. Section 72425 is added to the Public Resources Code, to read:

72425. (a) If the Administrator of the United States Environmental Protection Agency approves the application for sewage made pursuant to subdivision (a) of Section 72440, or if the board determines that an application is not required, an owner or operator of a large passenger vessel may not release, or permit anyone to release, any sewage from the vessel into the marine waters of the state.

(b) 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. Section 72430 of the Public Resources Code is amended to read:

72430. (a) A person who violates Section 72420 or 72425 is subject to a civil penalty of not more than twenty-five thousand dollars ($25,000) for each violation.

(b) The civil penalty imposed for each separate violation pursuant to this section is separate from, and in addition to, any other civil penalty imposed for a separate violation pursuant to this section or any other provision of law.

(c) In determining the amount of a civil penalty imposed pursuant to this section, the court shall take into consideration all relevant circumstances, including, but not limited to, the nature, circumstance, extent, and gravity of the violation. In making this determination, the court shall consider the degree of toxicity and volume of the release, the extent of harm caused by the violation, whether the effects of the violation may be reversed or mitigated, and with respect to the defendant, the ability to pay, the effect of a civil penalty on the ability to continue in business, all voluntary cleanup efforts undertaken, the prior history of violations, the gravity of the behavior, the economic benefit, if any, resulting from the violation, and all other matters the court determines justice may require.

(d) (1) A civil action brought under this section may only be brought in accordance with this subdivision. That civil action may be brought by the Attorney General upon complaint or request by the Department of

Fish and Game or the appropriate California regional water quality control board, or by a district attorney or city attorney.

(2) Notwithstanding Section 13223 of the Water Code, a regional water quality control board may delegate to its executive officer authority to request the Attorney General for judicial enforcement under this section.

(3) If a district attorney or city attorney brings an action under this section, the action shall be in the name of the people of the State of California.

(4) An action relating to the same violation may be joined or consolidated.

(e) This section shall become inoperative on January 1, 2010, 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. 7. Section 72430 is added to the Public Resources Code, to read:

72430. (a) A person who violates Section 72420 is subject to a civil penalty of not more than twenty-five thousand dollars ($25,000) for each violation.

(b) The civil penalty imposed for each separate violation pursuant to this section is separate from, and in addition to, any other civil penalty imposed for a separate violation pursuant to this section or any other provision of law.

(c) In determining the amount of a civil penalty imposed pursuant to this section, the court shall take into consideration all relevant circumstances, including, but not limited to, the nature, circumstance, extent, and gravity of the violation. In making this determination, the court shall consider the degree of toxicity and volume of the release, the extent of harm caused by the violation, whether the effects of the violation may be reversed or mitigated, and with respect to the defendant, the ability to pay, the effect of a civil penalty on the ability to continue in business, all voluntary cleanup efforts undertaken, the prior history of violations, the gravity of the behavior, the economic benefit, if any, resulting from the violation, and all other matters the court determines justice may require.

(d) (1) A civil action brought under this section may only be brought in accordance with this subdivision. That civil action may be brought by the Attorney General upon complaint or request by the Department of Fish and Game or the appropriate California regional water quality control board, or by a district attorney or city attorney.

(2) Notwithstanding Section 13223 of the Water Code, a regional water quality control board may delegate to its executive officer

authority to request the Attorney General for judicial enforcement under this section.

(3) If a district attorney or city attorney brings an action under this section, the action shall be in the name of the people of the State of California.

(4) An action relating to the same violation may be joined or consolidated.

(e) This section shall become operative on January 1, 2010.

SEC. 8. Section 72440 of the Public Resources Code is amended to read:

72440. (a) (1) The board shall determine whether it is necessary to apply to the federal government for the state to prohibit the release of sewage or sewage sludge from large passenger vessels into the marine waters of the state or to prohibit the release of sewage sludge from large passenger vessels into marine sanctuaries, as described in subdivision (a) of Section 72420 and Section 72425. If the board determines that application is necessary for either sewage or sewage sludge, or both, it shall apply to the appropriate federal agencies, as determined by the board, to authorize the state to prohibit the release of sewage or sewage sludge, or both, as necessary, from large passenger vessels into the marine waters of the state and, if necessary, to authorize the state to prohibit the release of sewage sludge from large passenger vessels into marine sanctuaries.

(2) It is not the Legislature's intent to establish for the marine waters of the state a no discharge zone for sewage from all vessels, but only for a class of vessels.

(b) The board shall request the appropriate federal agencies, as determined by the board, to prohibit the release of sewage sludge and oily bilgewater, except under the circumstances specified in Section 72441, by large passenger vessels, in all of the waters that are in the Channel Islands National Marine Sanctuary, Cordell Bank National Marine Sanctuary, Gulf of the Farallones National Marine Sanctuary, and Monterey Bay National Marine Sanctuary, that are not in the state waters.

(c) 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. 9. Section 72440 is added to the Public Resources Code, to read:

72440. (a) The board shall determine whether it is necessary to apply to the federal government for the state to prohibit the release of sewage sludge from large passenger vessels into the marine waters of the state or marine sanctuaries. If the board determines that application is necessary, it shall apply to the appropriate federal agencies, as

determined by the board, to authorize the state to prohibit the release of sewage sludge from large passenger vessels into the marine waters of the state and marine sanctuaries.

(b) The board shall request the appropriate federal agencies, as determined by the board, to prohibit the release of sewage sludge and oily bilgewater, except under the circumstances specified in Section 72441, by large passenger vessels, in all of the waters that are in the Channel Islands National Marine Sanctuary, Cordell Bank National Marine Sanctuary, Gulf of the Farallones National Marine Sanctuary, and Monterey Bay National Marine Sanctuary, that are not in the state waters.

(c) This section shall become operative on January 1, 2010.

CHAPTER 765

An act to add Chapter 10.27 (commencing with Section 672) to Part 1 of Division 1 of the Insurance Code, relating to insurance.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 24, 2004.]

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

SECTION 1. Chapter 10.27 (commencing with Section 672) is added to Part 1 of Division 1 of the Insurance Code, to read:

CHAPTER 10.27. AVAILABILITY OF COST ESTIMATES

672. (a) Every admitted insurer or insurer group licensed to sell automobile insurance shall provide consumers of personal automobile insurance, as described in Section 660, with a cost estimate for its lowest priced personal automobile insurance policy at the limits the consumer has requested and for which the consumer is eligible.

(b) The insurer shall meet this requirement by either or both of the following:

(1) Maintaining a toll-free telephone number available to consumers in any geographic area in which the insurer is authorized or approved to write business in California. Upon request, the insurer shall provide the consumer with a cost estimate, or shall refer the consumer to an insurer representative or insurance broker-agent who shall, upon request, provide such an estimate based upon information provided by the consumer. The insurer shall make this toll-free number available to the consumer by maintaining a listing in the toll-free telephone directory.

(2) Maintaining an Internet Web site where consumers can obtain a cost estimate online, or be referred to an insurer representative or insurance broker-agent who shall, upon request, provide the cost estimate based upon information provided by the consumer.

(c) Each insurer shall provide the toll-free number or the Internet Web site address, or both, to the commissioner, who shall make the information available on the department's Internet Web site and through the department's consumer toll-free telephone line.

CHAPTER 766

An act to amend Sections 1365, 1365.5, and 1368 of, and to add Sections 1365.2.5 and 1365.3 to, the Civil Code, relating to common interest developments.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 24, 2004.]

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

SECTION 1. Section 1365 of the Civil Code is amended to read:

1365. Unless the governing documents impose more stringent standards, the association shall prepare and distribute to all of its members the following documents:

(a) A pro forma operating budget, which shall include all of the following:

(1) The estimated revenue and expenses on an accrual basis.

(2) A summary of the association's reserves based upon the most recent review or study conducted pursuant to Section 1365.5, based only on assets held in cash or cash equivalents, which shall be printed in boldface type and include all of the following:

(A) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component.

(B) As of the end of the fiscal year for which the study is prepared:

(i) The current estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain the major components.

(ii) The current amount of accumulated cash reserves actually set aside to repair, replace, restore, or maintain major components.

(iii) If applicable, the amount of funds received from either a compensatory damage award or settlement to an association from any person or entity for injuries to property, real or personal, arising out of any construction or design defects, and the expenditure or disposition of funds, including the amounts expended for the direct and indirect costs

of repair of construction or design defects. These amounts shall be reported at the end of the fiscal year for which the study is prepared as separate line items under cash reserves pursuant to clause (ii). In lieu of complying with the requirements set forth in this clause, an association that is obligated to issue a review of their financial statement pursuant to subdivision (b) may include in the review a statement containing all of the information required by this clause.

(C) The percentage that the amount determined for purposes of clause (ii) of subparagraph (B) equals the amount determined for purposes of clause (i) of subparagraph (B).

(3) A statement as to both of the following:

(A) Whether the board of directors of the association has determined or anticipates that the levy of one or more special assessments will be required to repair, replace, or restore any major component or to provide adequate reserves therefor. If so, the statement shall also set out the estimated amount, commencement date, and duration of the assessment.

(B) The mechanism or mechanisms by which the board of directors will fund reserves to repair or replace major components, including assessments, borrowing, use of other assets, deferral of selected replacement or repairs, or alternative mechanisms.

(4) A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement, or additions to those major components that the association is obligated to maintain. The report shall include, but need not be limited to, reserve calculations made using the formula described in paragraph (4) of subdivision (b) of Section 1365.2.5, and may not assume a rate of return on cash reserves in excess of 2 percent above the rediscount rate published by the Federal Reserve Bank of San Francisco at the time the calculation was made.

The summary of the association's reserves disclosed pursuant to paragraph (2) shall not be admissible in evidence to show improper financial management of an association, provided that other relevant and competent evidence of the financial condition of the association is not made inadmissible by this provision.

Notwithstanding a contrary provision in the governing documents, a copy of the operating budget shall be annually distributed not less than 30 days nor more than 90 days prior to the beginning of the association's fiscal year.

(b) A review of the financial statement of the association shall be prepared in accordance with generally accepted accounting principles by a licensee of the California Board of Accountancy for any fiscal year in which the gross income to the association exceeds seventy-five thousand dollars ($75,000). A copy of the review of the financial statement shall be distributed within 120 days after the close of each fiscal year.

(c) In lieu of the distribution of the pro forma operating budget required by subdivision (a), the board of directors may elect to distribute a summary of the pro forma operating budget to all of its members with a written notice that the pro forma operating budget is available at the business office of the association or at another suitable location within the boundaries of the development, and that copies will be provided upon request and at the expense of the association. If any member requests that a copy of the pro forma operating budget required by subdivision (a) be mailed to the member, the association shall provide the copy to the member by first-class United States mail at the expense of the association and delivered within five days. The written notice that is distributed to each of the association members shall be in at least 10-point boldface type on the front page of the summary of the budget.

(d) A statement describing the association's policies and practices in enforcing lien rights or other legal remedies for default in payment of its assessments against its members shall be annually delivered to the members not less than 30 days nor more than 90 days immediately preceding the beginning of the association's fiscal year.

(e) (1) A summary of the association's property, general liability, earthquake, flood, and fidelity insurance policies, which shall be distributed not less than 30 days nor more than 90 days preceding the beginning of the association's fiscal year, that includes all of the following information about each policy:

(A) The name of the insurer.

(B) The type of insurance.

(C) The policy limits of the insurance.

(D) The amount of deductibles, if any.

(2) The association shall, as soon as reasonably practicable, notify its members by first-class mail if any of the policies described in paragraph (1) have lapsed, been canceled, and are not immediately renewed, restored, or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductible, as to any of those policies. If the association receives any notice of nonrenewal of a policy described in paragraph (1), the association shall immediately notify its members if replacement coverage will not be in effect by the date the existing coverage will lapse.

(3) To the extent that any of the information required to be disclosed pursuant to paragraph (1) is specified in the insurance policy declaration page, the association may meet its obligation to disclose that information by making copies of that page and distributing it to all of its members.

(4) The summary distributed pursuant to paragraph (1) shall contain, in at least 10-point boldface type, the following statement: ''This summary of the association's policies of insurance provides only certain information, as required by subdivision (e) of Section 1365 of the Civil

Code, and should not be considered a substitute for the complete policy terms and conditions contained in the actual policies of insurance. Any association member may, upon request and provision of reasonable notice, review the association's insurance policies and, upon request and payment of reasonable duplication charges, obtain copies of those policies. Although the association maintains the policies of insurance specified in this summary, the association's policies of insurance may not cover your property, including personal property or, real property improvements to or around your dwelling, or personal injuries or other losses that occur within or around your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Association members should consult with their individual insurance broker or agent for appropriate additional coverage."

SEC. 2. Section 1365.2.5 is added to the Civil Code, to read:

1365.2.5. (a) The disclosures required by this article in regard to an association or a property shall be summarized on the following form:

Assessment and Reserve Funding Disclosure Summary

(1) The current assessment per unit is $_____ per ____.
Note: If assessments vary by the size or type of unit, the assessment applicable to this unit may be found on page _____ of the attached report.

(2) Additional assessments that have already been scheduled to be imposed or charged, regardless of the purpose, if they have been approved by the board and/or members:

Date assessment is due:	Amount per unit per month (If assessments are variable, see note immediately below):	Purpose of the assessment:
	Total:	

Note: If assessments vary by the size or type of unit, the assessment applicable to this unit may be found on page ____ of the attached report.

(3) Based upon the most recent reserve study and other information available to the board of directors, will currently projected reserve account balances be sufficient at the end of each year to meet the association's

obligation for repair and/or replacement of major components during the next 30 years?

Yes _____ No _____

(4) If the answer to #3 is no, what additional assessments or other contributions to reserves would be necessary to ensure that sufficient reserve funds will be available each year during the next 30 years?

Approximate date assessment will be due:	Amount per unit per month:
	Total:

(5) The following major components, which are included in the reserve study, are NOT included in the existing reserve funding:

Major component:	Useful remaining life in years:	Reason this major component was not included:

(6) As of the last reserve study or update, the current balance in the reserve fund is $_____. Based on the method of calculation in paragraph (4) of subdivision (b) of Section 1365.2.5, the required amount in the reserve fund is $_____, and if an alternate, but generally accepted, method of calculation is also used, the required amount is $____. (See attached explanation)

NOTE: The financial representations set forth in this summary are based on the best estimates of the preparer at that time. The estimates are subject to change.

(b) For the purposes of preparing a summary pursuant to this section:

(1) ''Estimated remaining useful life'' means the time reasonably calculated to remain before a major component will require replacement.

(2) ''Major component'' has the meaning used in Section 1365.5. Components with an estimated remaining useful life of more than 30

years may be included in a study as a capital asset or disregarded from the reserve calculation, so long as the decision is revealed in the reserve study report and reported in the Assessment and Reserve Funding Disclosure Summary.

(3) The form set out in subdivision (a) shall accompany each pro forma operating budget or summary thereof that is delivered pursuant to this article. The form may be supplemented or modified to clarify the information delivered, so long as the minimum information set out in subdivision (a) is provided.

(4) For the purpose of the report and summary, the amount of reserves needed to be accumulated for a component at a given time shall be computed as the current cost of replacement or repair multiplied by the number of years the component has been in service divided by the useful life of the component. This shall not be construed to require the board to fund reserves in accordance with this calculation.

SEC. 3. Section 1365.3 is added to the Civil Code, to read:

1365.3. Unless the governing documents impose more stringent standards, any community service organization as defined in paragraph (3) of subdivision (c) of Section 1368 whose funding from the association or its members exceeds 10 percent of the organization's annual budget shall prepare and distribute to the association a report that meets the requirements of Section 5012 of the Corporations Code, and that describes in detail administrative costs and identifies the payees of those costs in a manner consistent with the provisions of Section 1365.2. If the community service organization does not comply with the standards, the report shall disclose the noncompliance in detail. If a community service organization is responsible for the maintenance of major components for which an association would otherwise be responsible, the community service organization shall supply to the association the information regarding those components that the association would use to complete disclosures and reserve reports required under this article. An association may rely upon information received from a community service organization, and shall provide access to the information pursuant to the provisions of Section 1365.2.

SEC. 4. Section 1365.5 of the Civil Code is amended to read:

1365.5. (a) Unless the governing documents impose more stringent standards, the board of directors of the association shall do all of the following:

(1) Review a current reconciliation of the association's operating accounts on at least a quarterly basis.

(2) Review a current reconciliation of the association's reserve accounts on at least a quarterly basis.

(3) Review, on at least a quarterly basis, the current year's actual reserve revenues and expenses compared to the current year's budget.

(4) Review the latest account statements prepared by the financial institutions where the association has its operating and reserve accounts.

(5) Review an income and expense statement for the association's operating and reserve accounts on at least a quarterly basis.

(b) The signatures of at least two persons, who shall be members of the association's board of directors, or one officer who is not a member of the board of directors and a member of the board of directors, shall be required for the withdrawal of moneys from the association's reserve accounts.

(c) (1) The board of directors shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components which the association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established.

(2) However, the board may authorize the temporary transfer of moneys from a reserve fund to the association's general operating fund to meet short-term cashflow requirements or other expenses, if the board has provided notice of the intent to consider the transfer in a notice of meeting, which shall be provided as specified in Section 1363.05. The notice shall include the reasons the transfer is needed, some of the options for repayment,and whether a special assessment may be considered. If the board authorizes the transfer, the board shall issue a written finding, recorded in the board's minutes, explaining the reasons that the transfer is needed, and describing when and how the moneys will be repaid to the reserve fund. The transferred funds shall be restored to the reserve fund within one year of the date of the initial transfer, except that the board may, after giving the same notice required for considering a transfer, and, upon making a finding supported by documentation that a temporary delay would be in the best interests of the common interest development, temporarily delay the restoration. The board shall exercise prudent fiscal management in maintaining the integrity of the reserve account, and shall, if necessary, levy a special assessment to recover the full amount of the expended funds within the time limits required by this section. This special assessment is subject to the limitation imposed by Section 1366. The board may, at its discretion, extend the date the payment on the special assessment is due. Any extension shall not prevent the board from pursuing any legal remedy to enforce the collection of an unpaid special assessment.

(d) When the decision is made to use reserve funds or to temporarily transfer moneys from the reserve fund to pay for litigation, the association shall notify the members of the association of that decision in the next available mailing to all members pursuant to Section 5016 of the Corporations Code, and of the availability of an accounting of those

expenses. Unless the governing documents impose more stringent standards, the association shall make an accounting of expenses related to the litigation on at least a quarterly basis. The accounting shall be made available for inspection by members of the association at the association's office.

(e) At least once every three years, the board of directors shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the major components which the association is obligated to repair, replace, restore, or maintain as part of a study of the reserve account requirements of the common interest development, if the current replacement value of the major components is equal to or greater than one-half of the gross budget of the association which excludes the association's reserve account for that period. The board shall review this study, or cause it to be reviewed, annually and shall consider and implement necessary adjustments to the board's analysis of the reserve account requirements as a result of that review.

The study required by this subdivision shall at a minimum include:

(1) Identification of the major components which the association is obligated to repair, replace, restore, or maintain which, as of the date of the study, have a remaining useful life of less than 30 years.

(2) Identification of the probable remaining useful life of the components identified in paragraph (1) as of the date of the study.

(3) An estimate of the cost of repair, replacement, restoration, or maintenance of the components identified in paragraph (1).

(4) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the components identified in paragraph (1) during and at the end of their useful life, after subtracting total reserve funds as of the date of the study.

(f) As used in this section, ''reserve accounts'' means both of the following:

(1) Moneys that the association's board of directors has identified for use to defray the future repair or replacement of, or additions to, those major components which the association is obligated to maintain.

(2) The funds received and not yet expended or disposed from either a compensatory damage award or settlement to an association from any person or entity for injuries to property, real or personal, arising from any construction or design defects. These funds shall be separately itemized from funds described in paragraph (1).

(g) As used in this section, ''reserve account requirements'' means the estimated funds which the association's board of directors has determined are required to be available at a specified point in time to repair, replace, or restore those major components which the association is obligated to maintain.

(h) This section does not apply to an association that does not have a ''common area'' as defined in Section 1351.

SEC. 5. Section 1368 of the Civil Code is amended to read:

1368. (a) The owner of a separate interest, other than an owner subject to the requirements of Section 11018.6 of the Business and Professions Code, shall, as soon as practicable before transfer of title to the separate interest or execution of a real property sales contract therefor, as defined in Section 2985, provide the following to the prospective purchaser:

(1) A copy of the governing documents of the common interest development, including any operating rules, and including a copy of the association's articles of incorporation, or, if not incorporated, a statement in writing from an authorized representative of the association that the association is not incorporated.

(2) If there is a restriction in the governing documents limiting the occupancy, residency, or use of a separate interest on the basis of age in a manner different from that provided in Section 51.3, a statement that the restriction is only enforceable to the extent permitted by Section 51.3 and a statement specifying the applicable provisions of Section 51.3.

(3) A copy of the most recent documents distributed pursuant to Section 1365.

(4) A true statement in writing obtained from an authorized representative of the association as to the amount of the association's current regular and special assessments and fees, any assessments levied upon the owner's interest in the common interest development that are unpaid on the date of the statement, and any monetary fines or penalties levied upon the owner's interest and unpaid on the date of the statement. The statement obtained from an authorized representative shall also include true information on late charges, interest, and costs of collection which, as of the date of the statement, are or may be made a lien upon the owner's interest in a common interest development pursuant to Section 1367 or 1367.1.

(5) A copy or a summary of any notice previously sent to the owner pursuant to subdivision (h) of Section 1363 that sets forth any alleged violation of the governing documents that remains unresolved at the time of the request. The notice shall not be deemed a waiver of the association's right to enforce the governing documents against the owner or the prospective purchaser of the separate interest with respect to any violation. This paragraph shall not be construed to require an association to inspect an owner's separate interest.

(6) A copy of the preliminary list of defects provided to each member of the association pursuant to Section 1375, unless the association and the builder subsequently enter into a settlement agreement or otherwise resolve the matter and the association complies with Section 1375.1.

Disclosure of the preliminary list of defects pursuant to this paragraph does not waive any privilege attached to the document. The preliminary list of defects shall also include a statement that a final determination as to whether the list of defects is accurate and complete has not been made.

(7) A copy of the latest information provided for in Section 1375.1.

(8) Any change in the association's current regular and special assessments and fees which have been approved by the association's board of directors, but have not become due and payable as of the date disclosure is provided pursuant to this subdivision.

(b) Upon written request, an association shall, within 10 days of the mailing or delivery of the request, provide the owner of a separate interest with a copy of the requested items specified in paragraphs (1) to (8), inclusive, of subdivision (a). The items required to be made available pursuant to this section may be maintained in electronic form and requesting parties shall have the option of receiving them by electronic transmission or machine readable storage media if the association maintains these items in electronic form. The association may charge a reasonable fee for this service based upon the association's actual cost to procure, prepare, and reproduce the requested items.

(c) (1) Subject to the provisions of paragraph (2), neither an association nor a community service organization or similar entity may impose or collect any assessment, penalty, or fee in connection with a transfer of title or any other interest except for the following:

(A) An amount not to exceed the association's actual costs to change its records.

(B) An amount authorized by subdivision (b).

(2) The amendments made to this subdivision by the act adding this paragraph do not apply to a community service organization or similar entity that is described in subparagraph (A) or (B):

(A) The community service organization or similar entity satisfies both of the following requirements:

(i) The community service organization or similar entity was established prior to February 20, 2003.

(ii) The community service organization or similar entity exists and operates, in whole or in part, to fund or perform environmental mitigation or to restore or maintain wetlands or native habitat, as required by the state or local government as an express written condition of development.

(B) The community service organization or similar entity satisfies all of the following requirements:

(i) The community service organization or similar entity is not an organization or entity described in subparagraph (A).

(ii) The community service organization or similar entity was established and received a transfer fee prior to January 1, 2004.

(iii) On and after January 1, 2006, the community service organization or similar entity offers a purchaser the following payment options for the fee or charge it collects at time of transfer:

(I) Paying the fee or charge at the time of transfer.

(II) Paying the fee or charge pursuant to an installment payment plan for a period of not less than seven years. If the purchaser elects to pay the fee or charge in installment payments, the community service organization or similar entity may also collect additional amounts that do not exceed the actual costs for billing and financing on the amount owed. If the purchaser sells the separate interest before the end of the installment payment plan period, he or she shall pay the remaining balance prior to transfer.

(3) For the purposes of this subdivision, a ''community service organization or similar entity'' means a nonprofit entity, other than an association, that is organized to provide services to residents of the common interest development or to the public in addition to the residents, to the extent community common areas or facilities are available to the public. A ''community service organization or similar entity'' does not include an entity that has been organized solely to raise moneys and contribute to other nonprofit organizations that are qualified as tax exempt under Section 501(c)(3) of the Internal Revenue Code and that provide housing or housing assistance.

(d) Any person or entity who willfully violates this section is liable to the purchaser of a separate interest that is subject to this section for actual damages occasioned thereby and, in addition, shall pay a civil penalty in an amount not to exceed five hundred dollars ($500). In an action to enforce this liability, the prevailing party shall be awarded reasonable attorneys' fees.

(e) Nothing in this section affects the validity of title to real property transferred in violation of this section.

(f) In addition to the requirements of this section, an owner transferring title to a separate interest shall comply with applicable requirements of Sections 1133 and 1134.

(g) For the purposes of this section, a person who acts as a community association manager is an agent, as defined in Section 2297, of the association.

SEC. 6. The provisions of this act shall apply to reports and disclosures made after July 1, 2005.

CHAPTER 767

An act to amend Sections 275, 276, and 276.5 of the Public Utilities Code, relating to telecommunications.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 24, 2004.]

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

SECTION 1. Section 275 of the Public Utilities Code, as added by Section 4 of Chapter 903 of the Statutes of 2001, is amended to read:

275. (a) There is hereby created the California High-Cost Fund-A Administrative Committee, which is an advisory board to advise the commission regarding the development, implementation, and administration of a program to provide for transfer payments to small independent telephone corporations providing local exchange services in high-cost rural and small metropolitan areas in the state to create fair and equitable local rate structures, as provided for in Section 739.3, the development of a grant program for the construction of telecommunications infrastructure as set forth in Section 276.5, and to carry out the program pursuant to the commission's direction, control, and approval.

(b) All revenues collected by telephone corporations in rates authorized by the commission to fund the program specified in subdivision (a) shall be submitted to the commission pursuant to a schedule established by the commission. The commission shall transfer the moneys received to the Controller for deposit in the California High-Cost Fund-A Administrative Committee Fund. All interest earned by moneys in the fund shall be deposited in the fund. Any unexpended revenues collected prior to the operative date of this section shall be submitted to the commission, and the commission shall transfer those moneys to the Controller for deposit in the California High-Cost Fund-A Administrative Committee Fund.

(c) Moneys appropriated from the California High-Cost Fund-A Administrative Committee Fund to the commission shall be utilized exclusively by the commission for the program specified in subdivision (a), including all costs of the board and the commission associated with the administration and oversight of the program and the fund.

(d) This section shall become operative on January 1, 2006.

SEC. 2. Section 276 of the Public Utilities Code, as added by Section 6 of Chapter 903 of the Statutes of 2001, is amended to read:

276. (a) There is hereby created the California High-Cost Fund-B Administrative Committee, which is an advisory board to advise the commission regarding the development, implementation, and

administration of a program to provide for transfer payments to telephone corporations providing local exchange services in high-cost areas in the state to create fair and equitable local rate structures, as provided for in Section 739.3, the development of a grant program for the construction of telecommunications infrastructure as set forth in Section 276.5, and to carry out the program pursuant to the commission's direction, control, and approval.

(b) All revenues collected by telephone corporations in rates authorized by the commission to fund the program specified in subdivision (a) shall be submitted to the commission pursuant to a schedule established by the commission. The commission shall transfer the moneys received to the Controller for deposit in the California High-Cost Fund-B Administrative Committee Fund. All interest earned by moneys in the fund shall be deposited in the fund. Any unexpended revenues collected prior to the operative date of this section shall be submitted to the commission, and the commission shall transfer those moneys to the Controller for deposit in the California High-Cost Fund-B Administrative Committee Fund.

(c) Moneys appropriated from the California High-Cost Fund-B Administrative Committee Fund to the commission shall be utilized exclusively by the commission for the program specified in subdivision (a), including all costs of the board and the commission associated with the administration and oversight of the program and the fund.

(d) This section shall become operative on January 1, 2006.

SEC. 3. Section 276.5 of the Public Utilities Code is amended to read:

276.5. (a) The commission shall establish a grant program to aid in the establishment of telecommunications service in areas not currently served by existing local exchange carriers. The program shall be funded out of either the California High-Cost Administrative Committee Fund-A or the California High-Cost Administrative Committee Fund-B, or both, as determined by the commission, and the funding level may not exceed ten million dollars ($10,000,000) per year.

(b) On or after July 1, 2002, any community-based group representing a qualifying community may apply for and receive grants to build an original telecommunications infrastructure that can provide basic telecommunications service that will serve an area that meets the grant program's population criteria with consideration given to communities with schools, hospitals, and health clinics, as set forth in Decision 96-10-066, and that currently lacks basic telecommunications services, as described in Decision 96-10-066 of the commission. A community-based group representing a qualifying community may alternatively apply for and receive a grant to subsidize the cost of the telecommunications service itself, if the group determines that this

would be more cost-effective than subsidizing the building of an original telecommunications infrastructure. On or before June 30, 2002, the commission, shall establish eligibility criteria for community-based groups to qualify to apply for telecommunications infrastructure grants. The criteria shall include a requirement that a local agency, as defined by Section 50001 of the Government Code, or a town, as defined by Section 21 of the Government Code, shall act as the community-based group's fiscal agent for the receipt and distribution of funds. Qualifying communities shall have a median household income no greater than the income level used in the Universal Lifeline Telephone Service index for a family of four. The commission shall require that the telecommunications carrier that provides the service has the obligation to serve the community.

(c) Grant proposals shall be submitted in accordance with procedures prescribed by the commission and evaluated and awarded by the commission using technology criteria developed by the government-industry working group established by subdivision (h). Grant proposals shall contain all of the following:

(1) A letter from a local agency or town agreeing to act as a fiscal agent for the receipt and distribution of funds.

(2) Preliminary engineering feasibility studies conducted in cooperation with the local service providers that include all of the following:

(A) Topographical maps indicating the location of all existing residences.

(B) Schematic maps of the proposed network facilities.

(C) Recommendations and justifications for the preferred technologies.

(D) Network compatibility statements from one or more interconnecting carriers.

(E) Cost projections for the infrastructure facilities.

(F) Cost projections for the interconnection and recurring service provisions.

(G) Projected budget for engineering feasibility studies.

(3) Recommendations and letters of support from all of the following:

(A) The county board of supervisors.

(B) Other affected local governments.

(C) Affected school districts.

(D) Affected emergency service providers.

(E) Affected law enforcement agencies.

(4) Letters of commitment from 75 percent of the unserved population.

(5) A project schedule, including timeline and budget.

(6) A management plan that assures the proper utilization of grant funds.

(7) Evidence that competing providers and competing technologies have been considered and evaluated.

(d) Grant applicants that are rejected by the commission may be reimbursed for the cost of their preliminary engineering feasibility studies, including, but not limited to, any approved cost of a local telecommunications carrier that contributes to the studies, from the grant program.

(e) The procedures developed for awarding grants shall ensure that the grants awarded do not exceed annual moneys available to support the program, that not more than one grant is awarded to a qualifying community, and that no one applicant receive more than 25 percent of the designated program funds in a single fiscal year.

(f) In evaluating grant applications, the commission shall consider the cost effectiveness of the application, the number of people served, the level of local support, the ability of the community served to pay for the services delivered, and the effect on public health and safety.

(g) The commission shall establish a government-industry working group to develop the technical criteria to be used in evaluating grant awards. The working group shall be composed of, but not limited to, the following:

(1) Representatives of the commission.

(2) Representatives of the incumbent local exchange carrier industry.

(3) Representatives of the competitive local exchange carrier industry.

(4) Representatives of the wireless carrier industry.

(h) Grant applicants shall seek to secure federal sources of funding in conjunction with local subsidies for the construction of telecommunications infrastructure.

(i) This section shall remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statute enacted before January 1, 2009, deletes or extends that date.

SEC. 4. This act shall not become operative unless Senate Bill 1276 of the 2003–04 Regular Session is enacted, amends Section 739.3 of the Public Utilities Code, and becomes effective on or before January 1, 2005.

CHAPTER 768

An act to amend Section 1604 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 24, 2004. Filed with
Secretary of State September 24, 2004.]

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

SECTION 1. Section 1604 of the Revenue and Taxation Code is amended to read:

1604. (a) (1) In counties of the first class, annually, on the fourth Monday in September, the county board shall meet to equalize the assessment of property on the local roll. The board shall continue to meet for that purpose, from time to time, until the business of equalization is disposed of.

(2) In all other counties, annually, on the third Monday in July, the county board shall meet to equalize the assessment of property on the local roll. It shall continue to meet for that purpose, from time to time, until the business of equalization is disposed of.

(b) (1) Any taxpayer may petition the board for a reduction in an assessment by filing an application pursuant to Section 1603. An application for a reduction in an assessment shall also constitute a sufficient claim for refund, if the applicant states in the application that the application is also intended to constitute a claim for refund pursuant to the provisions of Section 5097.

(2) The county board shall have no power to receive or hear any petition for a reduction in an escaped assessment made pursuant to Section 531.1 nor a penal assessment levied in respect thereto, nor to reduce those assessments.

(c) If the county assessment appeals board fails to hear evidence and fails to make a final determination on the application for reduction in assessment of property within two years of the timely filing of the application, the taxpayer's opinion of market value as reflected on the application for reduction in assessment shall be the value upon which taxes are to be levied for the tax year covered by the application, unless either of the following occurs:

(1) The taxpayer and the county assessment appeals board mutually agree in writing, or on the record, to an extension of time for the hearing.

(2) The application for reduction is consolidated for hearing with another application by the same taxpayer with respect to which an extension of time for the hearing has been granted pursuant to paragraph (1). In no case shall the application be consolidated without the taxpayer's written agreement after the two-year time period has passed or after an extension of the two-year time period previously agreed to by the taxpayer has expired.

The reduction in assessment reflecting the taxpayer's opinion of market value shall not be made, however, until two years after the close

of the filing period during which the timely application was filed. Further, this subdivision shall not apply to applications for reductions in assessments of property where the taxpayer has failed to provide full and complete information as required by law or where litigation is pending directly relating to the issues involved in the application. This subdivision is only applicable to applications filed on or after January 1, 1983.

(d) (1) When the applicant's opinion of value, as stated on the application, has been placed on the assessment roll pursuant to subdivision (c), and the application requested a reduction in the base year value of an assessment pursuant to subdivision (a) of Section 80, the applicant's opinion of value shall remain on the roll until the county board makes a final determination on the application. The value so determined by the county board, plus appropriate adjustments for the inflation factor, shall be entered on the assessment roll for the fiscal year in which the value is determined. No increased or escape taxes other than those required by a purchase, change in ownership, or new construction, or resulting from application of the inflation factor to the applicant's opinion of value shall be levied for the tax years during which the county board failed to act.

(2) When the applicant's opinion of value has been placed on the assessment roll pursuant to subdivision (c) for any application other than an application filed pursuant to subdivision (a) of Section 80, the applicant's opinion of value shall be enrolled on the assessment roll for the tax year or tax years covered by that application.

(e) The county board shall notify the applicant in writing of any decision by that board not to hold a hearing on his or her application for reduction in assessment within the two-year period specified in subdivision (c). This notice shall also inform the applicant that the taxpayer's opinion of value as reflected on the application for reduction in assessment shall, as a result of the county board's failure to hold a hearing within the prescribed time period, be the value upon which taxes are to be levied in the absence of the application of either paragraph (1) or (2) of subdivision (c).

CHAPTER 769

An act to add Section 675 to the Penal Code, relating to sentencing.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 24, 2004.]

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

SECTION 1. Section 675 is added to the Penal Code, to read:

675. (a) Any person suffering a felony conviction for a violation of subdivision (c) or (d) of Section 261.5, paragraph (1) or (2) of subdivision (b) or paragraph (1) of subdivision (c) of Section 286, subdivision (a) or paragraph (1) of subdivision (c) of Section 288, or paragraph (1) or (2) of subdivision (b) or paragraph (1) of subdivision (c) of Section 288a, where the offense was committed with a minor for money or other consideration, is punishable by an additional term of imprisonment in the state prison of one year.

(b) The enhancements authorized by this section may be imposed in addition to any other required or authorized enhancement.

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 770

An act to add Section 1264 to the Health and Safety Code, relating to prenatal testing.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 24, 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 evaluation of the fetal heart is one of the more difficult tasks for persons who perform prenatal, or fetal, ultrasounds.

(b) Congenital heart defects are one of the most common birth defects and associated with one of the highest mortality rates following birth.

(c) One out of every 125 to 150 babies is born with a congenital heart defect each year.

(d) If all sonographers in health facilities in the state who perform prenatal ultrasounds to screen for congenital heart defects were required to be nationally certified in obstetrical ultrasound, it could significantly increase prenatal detection rates of congenital heart disease and other

fetal defects, and could result in improved outcomes for neonates and decreased costs to providers.

SEC. 2. Section 1264 is added to the Health and Safety Code, to read:

1264. (a) Any health facility licensed under Section 1250 that provides prenatal screening ultrasound to detect congenital heart defects shall require that the ultrasound be performed by a sonographer who is nationally certified in obstetrical ultrasound by the American Registry for Diagnostic Medical Sonography (ARDMS), nationally certified in cardiac sonography by Cardiovascular Credentialing International (CCI), or credentialed in sonography by the American Registry of Radiologic Technologists (ARRT).

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

(1) A sonographer is also known as an ''ultrasound technologist'' or ''sonologist.''

(2) ''Sonographer'' means any nonphysician who is qualified by national certification or academic or clinical experience to perform diagnostic medical ultrasound, with a subspecialty in obstetrical ultrasound.

(c) (1) Any sonographer who is certified as required in subdivision (a) or otherwise meets the requirements of this section, shall, in performing a prenatal ultrasound to detect congenital heart defects, perform the work under the supervision of a licensed physician and surgeon.

(2) For purposes of this section, licensed physician and surgeon means any physician and surgeon, licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code.

(d) Any person with a minimum of two years of full-time work experience in this state as a sonographer in prenatal ultrasound and has obtained, or is in the process of obtaining, 30 continuing medical education credits over a three-year period in ultrasound shall be deemed to be in compliance with the requirements of this section.

(e) A health facility shall develop policies and procedures to implement the requirements of this section.

(f) This section and policies and procedures adopted pursuant to this section shall not prohibit any physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code from performing a prenatal ultrasound nor in any other way limit the ability of a licensed physician and surgeon to practice medicine in a manner consistent with that license.

(g) This section and policies and procedures adopted pursuant to this section shall not apply to any physician and surgeon, sonologist, certified nurse-midwife, or nurse practitioner who performs limited

prenatal ultrasounds for the purpose of obtaining an amniotic fluid index, fetal position, a biophysical profile or dating a pregnancy prior to 20 weeks gestation.

(h) Article 4 (commencing with Section 1235) and any other provision relating to criminal sanctions for violations of this chapter shall not apply to any person who violates this section or any regulation adopted pursuant to this section.

(i) This section shall become operative on July 1, 2006.

CHAPTER 771

An act relating to property insurance.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 25, 2004.]

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

SECTION 1. (a) The following definitions apply for the purposes of this act:

(1) ''Subsidized low- and moderate-income rental housing'' means real property designed for human habitation that is assisted by the federal or state government or by a local public entity under any of the programs specified in paragraph (3) of subdivision (a) of Section 65863.10 of the Government Code, and is intended for occupancy by persons and families of low- or moderate-income, as defined in Section 50093 of the Health and Safety Code, or agricultural employees, as defined in subdivision (b) of Section 1140.4 of the Labor Code, and their families, or persons and families receiving federal vouchers issued under Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f).

(2) ''Provide'' means develop, develop and own, or own the housing described in paragraph (1).

(3) ''Commercial residential property'' means multifamily rental housing with five or more units.

(4) ''Nonprofit corporation'' means an applicant or insured that is organized under the Nonprofit Corporation Law (Division 2 (commencing with Section 5000) of the Corporations Code).

(b) The Insurance Commissioner shall conduct a study of the market for property and liability insurance for corporations that provide subsidized low- and moderate-income rental housing. The results of this study shall be presented to the chairs of the Assembly and Senate Committees on Insurance on or before July 1, 2005. The study shall involve insurers licensed in California, shall be limited to the sale of

property and liability insurance for commercial residential property, and shall evaluate, at a minimum, the following matters to the extent this information is tracked and maintained by insurers:

(1) Whether the availability of property and liability insurance for nonprofit corporations that provide subsidized low- and moderate-income rental housing is decreasing or is insufficient.

(2) Whether changes in the market availability of property and liability insurance for nonprofit corporations providing subsidized low- and moderate-income rental housing is consistent with changes in the availability of property and liability insurance for for-profit entities that provide subsidized low- and moderate-income rental housing.

(3) Whether changes in the market availability of property and liability insurance for nonprofit corporations providing subsidized low- and moderate-income rental housing is consistent with changes in the availability of property and liability insurance for for-profit entities that provide commercial residential housing that is not subsidized.

(4) How the loss experience of nonprofit corporations providing subsidized low- and moderate-income rental housing compares with each of the following:

(A) The loss experience of for-profit corporations providing subsidized low- and moderate-income rental housing.

(B) The loss experience of entities that provide commercial residential housing that is not subsidized.

(c) Before beginning the study, the commissioner shall seek input from insurers and corporations providing subsidized low- and moderate-income rental housing to determine the type of information that will be gathered to evaluate the matters outlined in subdivision (b).

(d) Nothing in this act shall limit or expand the authority of the commissioner to request data from insurers as provided in subdivision (c) of Section 700 and subdivision (b) of Section 1857.9 of the Insurance Code.

CHAPTER 772

An act to amend Section 8686 of the Government Code, and to amend Sections 17207 and 24347.5 of, and to add Sections 195.89, 195.90, and 195.91 to, the Revenue and Taxation Code, relating to disaster relief, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 25, 2004.]

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

SECTION 1. Section 8686 of the Government Code is amended to read:

8686. (a) For any eligible project, the state share shall amount to no more than 75 percent of total state eligible costs.

(b) Notwithstanding subdivision (a), the state share shall be up to 100 percent of total state eligible costs connected with the following events:

(1) The October 17, 1989, Loma Prieta earthquake.

(2) The October 20, 1991, East Bay fire.

(3) The fires that occurred in southern California from October 1, 1993, to November 30, 1993, inclusive.

(4) The January 17, 1994, Northridge earthquake.

(5) Storms that occurred in California during the periods commencing January 3, 1995, and February 13, 1995, as specified in agreements between this state and the United States for federal financial assistance.

(6) The storms that occurred in California in December of 1996 and early January of 1997, as specified in agreements between this state and the United States for federal financial assistance.

(7) The winter storms and flooding that occurred from February 1, 1998, to April 30, 1998, inclusive, as specified in agreements between this state and the United States for federal financial assistance.

(8) The wildfires that occurred in southern California commencing October 21, 2003, as specified in agreements between this state and the United States for federal financial assistance.

(9) The December 22, 2003, San Simeon earthquake, as specified in agreements between this state and the United States for federal financial assistance.

(c) For any federally declared disaster subsequent to January 1, 1995, that the Legislature has designated in subdivision (b), the state shall assume the increased share specified in subdivision (b) in those cases where the Federal Emergency Management Agency or another applicable federal agency has approved the federal share of costs.

(d) The state shall make no allocation for any project application resulting in a state share of less than two thousand five hundred dollars ($2,500) under this section.

SEC. 2. Section 195.89 is added to the Revenue and Taxation Code, to read:

195.89. By September 30, 2004, the auditors of the Counties of Los Angeles, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, and Ventura, which were the subject of the Governor's Proclamation of a state of emergency for the fires occurring in October and November 2003, for the mudslides occurring in San Bernardino

County as a result of those fires, and for the earthquake that occurred in December 2003 in San Luis Obispo County and Santa Barbara County, shall certify to the Director of Finance an estimate of the total amount of the reduction in property tax revenues on both the regular secured roll and the supplemental roll for the 2003–04 fiscal year resulting from the reassessment by the county assessor pursuant to paragraph (1) of subdivision (a) of Section 170 of those properties that are eligible properties as a result of that disaster, except that the amount certified shall not include any estimated property tax revenue reductions to school districts (other than basic state aid school districts) and county offices of education. For purposes of this section, ''basic state aid school district'' means any school district that does not receive a state apportionment pursuant to subdivision (h) of Section 42238 of the Education Code, but receives from the state only a basic apportionment pursuant to Section 6 of Article IX of the California Constitution.

SEC. 3. Section 195.90 is added to the Revenue and Taxation Code, to read:

195.90. After the county auditor of an eligible county, as described in Section 195.89, has made the applicable certification to the Director of Finance pursuant to that section, the director shall, within 30 days after verification of the county auditor's estimate, certify this amount to the Controller for allocation to the county. Upon receipt of certification from the Director of Finance, the Controller shall make the appropriate allocation to the county within 10 working days.

SEC. 4. Section 195.91 is added to the Revenue and Taxation Code, to read:

195.91. On or before June 30, 2005, each eligible county, as described in Section 195.89, shall compute and remit to the Controller for deposit in the General Fund an amount equal to the amount allocated to it by the Controller pursuant to Section 195.90, less the actual amount of its property tax revenue lost on the regular secured and supplemental rolls with respect to those eligible properties described in Section 195.89 as a result of the reassessment of those properties pursuant to paragraph (1) of subdivision (a) of Section 170, excluding any property tax revenue lost by school districts (other than basic state aid school districts) and county offices of education. If the actual amount of property tax revenue lost by an eligible county in the immediately preceding fiscal year, as described and limited in the preceding sentence, exceeds the amount allocated by the Controller to that county pursuant to Section 195.90, the Controller shall allocate the amount of that excess to that eligible county. For purposes of this section, ''basic state aid school district'' means any school district that does not receive a state apportionment pursuant to subdivision (h) of Section 42238 of the Education Code, but receives

from the state only a basic apportionment pursuant to Section 6 of Article IX of the California Constitution.

SEC. 5. The Legislature finds and declares that this act fulfills a statewide public purpose because of both of the following:

(a) The Governor of California has officially proclaimed a state of emergency that declared that the fires that occurred in southern California during October and November 2003, and the earthquake that occurred in San Luis Obispo and Santa Barbara in December 2003, were natural disasters, thus qualifying affected persons for various forms of governmental assistance and relief.

(b) This act is consistent with, and supplements, the proclaimed disaster assistance and relief by providing necessary fiscal assistance and tax relief to affected jurisdictions and persons to allow them to maintain essential basic services and repair damage to, and restore, their homes and businesses.

SEC. 6. Section 17207 of the Revenue and Taxation Code is amended to read:

17207. (a) An excess disaster loss, as defined in subdivision (c), shall be carried to other taxable years as provided in subdivision (b), with respect to losses resulting from any of the following disasters:

(1) Forest fire or any other related casualty occurring in 1985 in California.

(2) Storm, flooding, or any other related casualty occurring in 1986 in California.

(3) Any loss sustained during 1987 as a result of a forest fire or any other related casualty.

(4) Earthquake, aftershock, or any other related casualty occurring in 1987 in California.

(5) Earthquake, aftershock, or any other related casualty occurring in 1989 in California.

(6) Any loss sustained during 1990 as a result of fire or any other related casualty in California.

(7) Any loss sustained as a result of the Oakland/Berkeley Fire of 1991, or any other related casualty.

(8) Any loss sustained as a result of storm, flooding, or any other related casualty occurring in February 1992 in California.

(9) Earthquake, aftershock, or any other related casualty occurring in April 1992 in the County of Humboldt.

(10) Riots, arson, or any other related casualty occurring in April or May 1992 in California.

(11) Any loss sustained as a result of the earthquakes that occurred in the County of San Bernardino in June and July of 1992, or any other related casualty.

(12) Any loss sustained as a result of the Fountain Fire that occurred in the County of Shasta, or as a result of either of the fires in the Counties of Calaveras and Trinity that occurred in August 1992, or any other related casualty.

(13) Any loss sustained as a result of storm, flooding, or any other related casualty that occurred in the Counties of Alpine, Contra Costa, Fresno, Humboldt, Imperial, Lassen, Los Angeles, Madera, Mendocino, Modoc, Monterey, Napa, Orange, Plumas, Riverside, San Bernardino, San Diego, Santa Barbara, Sierra, Siskiyou, Sonoma, Tehama, Trinity, and Tulare, and the City of Fillmore in January 1993.

(14) Any loss sustained as a result of a fire that occurred in the Counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura, during October or November of 1993, or any other related casualty.

(15) Any loss sustained as a result of the earthquake, aftershocks, or any other related casualty that occurred in the Counties of Los Angeles, Orange, and Ventura on or after January 17, 1994.

(16) Any loss sustained as a result of a fire that occurred in the County of San Luis Obispo during August of 1994, or any other related casualty.

(17) Any loss sustained as a result of the storms or flooding occurring in 1995, or any other related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms and flooding.

(18) Any loss sustained as a result of the storms or flooding occurring in December 1996 or January 1997, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms or flooding.

(19) Any loss sustained as a result of the storms or flooding occurring in February 1998, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms or flooding.

(20) Any loss sustained as a result of a freeze occurring in the winter of 1998–99, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the freeze.

(21) Any loss sustained as a result of an earthquake occurring in September 2000, that was included in the Governor's proclamation of a state emergency for the County of Napa.

(22) Any loss sustained as a result of the Middle River levee break in San Joaquin County occurring in June 2004.

(23) Any losses sustained as a result of the fires that occurred in the Counties of Los Angeles, San Bernardino, Riverside, San Diego, and Ventura in October and November 2003, or as a result of floods, mudflows, and debris flows, directly related to fires.

(24) Any losses sustained in the Counties of Santa Barbara and San Luis Obispo as a result of the San Simeon earthquake, aftershocks, and any other related casualties.

(b) (1) In the case of any loss allowed under Section 165(c) of the Internal Revenue Code, relating to limitation of losses of individuals, any excess disaster loss shall be carried forward to each of the five taxable years following the taxable year for which the loss is claimed. However, if there is any excess disaster loss remaining after the five-year period, then the applicable percentage, as set forth in paragraph (1) of subdivision (b) of Section 17276, of that excess disaster loss shall be carried forward to each of the next 10 taxable years.

(2) The entire amount of any excess disaster loss as defined in subdivision (c) shall be carried to the earliest of the taxable years to which, by reason of subdivision (b), the loss may be carried. The portion of the loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of excess disaster loss over the sum of the adjusted taxable income for each of the prior taxable years to which that excess disaster loss is carried.

(c) ''Excess disaster loss'' means a disaster loss computed pursuant to Section 165 of the Internal Revenue Code which exceeds the adjusted taxable income of the year of loss or, if the election under Section 165(i) of the Internal Revenue Code is made, the adjusted taxable income of the year preceding the loss.

(d) The provisions of this section and Section 165(i) of the Internal Revenue Code shall be applicable to any of the losses listed in subdivision (a) sustained in any county or city in this state which was proclaimed by the Governor to be in a state of disaster.

(e) Losses allowable under this section may not be taken into account in computing a net operating loss deduction under Section 172 of the Internal Revenue Code.

(f) For purposes of this section, ''adjusted taxable income'' shall be defined by Section 1212(b)(2)(B) of the Internal Revenue Code.

(g) For losses described in paragraphs (15) to (24), inclusive, of subdivision (a), the election under Section 165(i) of the Internal Revenue Code may be made on a return or amended return filed on or before the due date of the return (determined with regard to extension) for the taxable year in which the disaster occurred.

SEC. 7. Section 24347.5 of the Revenue and Taxation Code is amended to read:

24347.5. (a) An excess disaster loss, as defined in subdivision (c), shall be carried to other taxable years as provided in subdivision (b), with respect to losses resulting from any of the following disasters:

(1) Forest fire or any other related casualty occurring in 1985 in California.

(2) Storm, flooding, or any other related casualty occurring in 1986 in California.

(3) Any loss sustained during 1987 as a result of a forest fire or any other related casualty.

(4) Earthquake, aftershock, or any other related casualty occurring in October 1987 in California.

(5) Earthquake, aftershock, or any other related casualty occurring in October 1989 in California.

(6) Any loss sustained during 1990 as a result of fire or any other related casualty in California.

(7) Any loss sustained as a result of the Oakland/Berkeley Fire of 1991, or any other related casualty.

(8) Any loss sustained as a result of storm, flooding, or any other related casualty occurring in February 1992 in California.

(9) Earthquake, aftershock, or any other related casualty occurring in April 1992 in the County of Humboldt.

(10) Riots, arson, or any other related casualty occurring in April or May 1992 in California.

(11) Any loss sustained as a result of the earthquakes or any other related casualty that occurred in the County of San Bernardino in June and July of 1992.

(12) Any loss sustained as a result of the Fountain Fire that occurred in the County of Shasta, or as a result of either of the fires in the Counties of Calaveras and Trinity that occurred in August 1992, or any other related casualty.

(13) Any loss sustained as a result of storm, flooding, or any other related casualty that occurred in the Counties of Alpine, Contra Costa, Fresno, Humboldt, Imperial, Lassen, Los Angeles, Madera, Mendocino, Modoc, Monterey, Napa, Orange, Plumas, Riverside, San Bernardino, San Diego, Santa Barbara, Sierra, Siskiyou, Sonoma, Tehama, Trinity, and Tulare, and the City of Fillmore in January 1993.

(14) Any loss sustained as a result of a fire that occurred in the Counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura, during October or November of 1993, or any other related casualty.

(15) Any loss sustained as a result of the earthquake, aftershocks, or any other related casualty that occurred in the Counties of Los Angeles, Orange, and Ventura on or after January 17, 1994.

(16) Any loss sustained as a result of a fire that occurred in the County of San Luis Obispo during August of 1994, or any other related casualty.

(17) Any loss sustained as a result of the storms or flooding occurring in 1995, or any other related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms and flooding.

(18) Any loss sustained as a result of the storms or flooding occurring in December 1996 or January 1997, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms or flooding.

(19) Any loss sustained as a result of the storms or flooding occurring in February 1998, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms or flooding.

(20) Any loss sustained as a result of a freeze occurring in the winter of 1998–99, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the freeze.

(21) Any loss sustained as a result of an earthquake occurring in September 2000, that was included in the Governor's proclamation of a state of emergency for the County of Napa.

(22) Any loss sustained as a result of the Middle River levee break in San Joaquin County occurring in June 2004.

(23) Any losses sustained as a result of the fires that occurred in the Counties of Los Angeles, San Bernardino, Riverside, San Diego, and Ventura in October and November 2003, or as a result of floods, mudflows, and debris flows, directly related to fires.

(24) Any losses sustained in the Counties of Santa Barbara and San Luis Obispo as a result of the San Simeon earthquake, aftershocks, and any other related casualties.

(b) (1) In the case of any loss allowed under Section 165 of the Internal Revenue Code, relating to losses, any excess disaster loss shall be carried forward to each of the five taxable years following the taxable year for which the loss is claimed. However, if there is any excess disaster loss remaining after the five-year period, then the applicable percentage, as set forth in paragraph (1) of subdivision (b) of Section 24416, of that excess disaster loss shall be carried forward to each of the next 10 taxable years.

(2) The entire amount of any excess disaster loss as defined in subdivision (c) shall be carried to the earliest of the taxable years to which, by reason of subdivision (b), the loss may be carried. The portion of the loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of excess disaster loss over the sum of the net income for each of the prior taxable years to which that excess disaster loss is carried.

(c) ''Excess disaster loss'' means a disaster loss computed pursuant to Section 165 of the Internal Revenue Code, which exceeds the net income of the year of loss or, if the election under Section 165(i) of the Internal Revenue Code is made, the net income of the year preceding the loss.

(d) The provisions of this section and Section 165(i) of the Internal Revenue Code shall be applicable to any of the losses listed in subdivision (a) sustained in any county or city in this state which was proclaimed by the Governor to be in a state of disaster.

(e) Any corporation subject to the provisions of Section 25101 or 25101.15 that has disaster losses pursuant to this section, shall determine the excess disaster loss to be carried to other taxable years under the principles specified in Section 25108 relating to net operating losses.

(f) Losses allowable under this section may not be taken into account in computing a net operating loss deduction under Section 172 of the Internal Revenue Code.

(g) For losses described in paragraphs (15) to (24), inclusive, of subdivision (a), the election under Section 165(i) of the Internal Revenue Code may be made on a return or amended return filed on or before the due date of the return (determined with regard to extension) for the taxable year in which the disaster occurred.

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 timely provide essential relief to those persons and jurisdictions who have suffered damage or loss as a result of the fires that occurred in California during October and November 2003, the San Simeon earthquake of December 22, 2003, and the Middle River levee break in San Joaquin County in June 2004, it is necessary that this act take effect immediately.

CHAPTER 773

An act to amend Item 0845-101-0217 of Section 2.00 of Chapter 208 of the Statutes of 2004, relating to insurance, and making an appropriation therefor.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 25, 2004.]

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

SECTION 1. Item 0845-101-0217 of Section 2.00 of Chapter 208 of the Statutes of 2004 is amended to read:

0845-101-0217—For local assistance, Department of Insurance, Program 20–Fraud Control, payable from the Insurance Fund . . . . . (44,165,000)

SEC. 2. The additional five million two hundred two thousand dollars ($5,202,000) appropriated by Section 1 of this act shall be derived from the funds collected pursuant to Section 1872.8 of the Insurance Code and shall be used exclusively for distribution to district attorneys pursuant to that section for the investigation and prosecution of automobile theft and insurance fraud. The funds shall be distributed to district attorneys during the 2004–05 fiscal year.

CHAPTER 774

An act to amend Section 25299.43 of, and to add and repeal Section 25299.50.2 of, the Health and Safety Code, relating to hazardous materials.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 25, 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 petroleum underground storage tank cleanup fees authorized under Article 5 (commencing with Section 25299.40) of Chapter 6.75 of Division 20 of the Health and Safety Code were last increased on January 1, 1997.

(b) The value of those fees has been eroded by inflation.

(c) The average cost of cleanup per claim under the petroleum underground storage tank cleanup program (Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code) has greatly increased since the inception of that program.

(d) It is substantially uncertain that the existing cleanup program will generate sufficient funds to pay all claimants under the program, particularly class D claimants, as identified in paragraph (4) of subdivision (b) of Section 25299.52 of the Health and Safety Code.

(e) The modest fee increases authorized under this act are intended to ensure that all claimants under the cleanup program will have a reasonable opportunity to have approved claims paid before the expiration of the cleanup program, as was envisioned when the program was initially established.

SEC. 2. Section 25299.43 of the Health and Safety Code is amended to read:

25299.43. (a) To implement the changes to this chapter made by the act adding this section, and consistent with Section 25299.40, effective January 1, 1995, every owner subject to Section 25299.41 shall pay a storage fee of one mill ($0.001) for each gallon of petroleum placed in an underground storage tank which the person owns, in addition to the fee required by Section 25299.41.

(b) On and after January 1, 1996, the storage fee imposed under subdivision (a) shall be increased by two mills ($0.002) for each gallon of petroleum placed in an underground storage tank.

(c) On and after January 1, 1997, the storage fee increased under subdivision (b) shall be increased by an additional three mills ($0.003) for each gallon of petroleum placed in an underground storage tank.

(d) On and after January 1, 2005, the storage fee increased under subdivision (c) shall be increased by an additional one mill ($0.001) for each gallon of petroleum placed in an underground storage tank.

(e) On and after January 1, 2006, the storage fee increased under subdivision (d) shall be increased by an additional one mill ($0.001) for each gallon of petroleum placed in an underground storage tank.

(f) The fee imposed under this section shall be paid to the State Board of Equalization under Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code in the same manner as, and consistent with, the fees imposed under Section 24299.41.

(g) The State Board of Equalization shall amend the regulations adopted under Section 25299.41 to carry out this section.

SEC. 3. Section 25299.50.2 is added to the Health and Safety Code, to read:

25299.50.2. (a) The Underground Storage Tank Petroleum Contamination Orphan Site Cleanup Subaccount is hereby established in the Underground Storage Tank Cleanup Fund.

(b) The sum of 10 million dollars ($10,000,000) is hereby annually transferred, for calendar years 2005, 2006, and 2007, from the fund to the Underground Storage Tank Petroleum Contamination Orphan Site Cleanup Subaccount, for expenditure upon appropriation by the Legislature, for the costs of response actions to remediate the harm caused by a petroleum contamination, including contamination caused by a refined product of petroleum or a petroleum derivative, at sites that meet the conditions described in paragraph (2) of subdivision (a) of Section 25395.20, if all of the following conditions are met:

(1) The petroleum contamination is the principal source of contamination at the site.

(2) The source of the petroleum contamination is, or was, an underground storage tank.

(3) A financially responsible party has not been identified to pay for remediation at the site.

(c) Any funds in the subaccount that are not expended in calendar year 2005 and 2006 shall remain in the subaccount. Any funds remaining in the subaccount on January 1, 2008, shall be transferred to the fund.

(d) 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 775

An act to amend Sections 7611, 7630, and 7650 of the Family Code, to add Chapter 4.4 (commencing with Section 1644.7) to Division 2 of the Health and Safety Code, to amend Sections 10172 and 10172.5 of the Insurance Code, and to amend Section 6453 of, and to add Sections 249.5, 249.6, 249.7, and 249.8 to, the Probate Code, relating to probate.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 25, 2004.]

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

SECTION 1. Section 7611 of the Family Code is amended to read:

7611. A man is presumed to be the natural father of a child if he meets the conditions provided in Chapter 1 (commencing with Section 7540) or Chapter 3 (commencing with Section 7570) of Part 2 or in any of the following subdivisions:

(a) He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a judgment of separation is entered by a court.

(b) Before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and either of the following is true:

(1) If the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce.

(2) If the attempted marriage is invalid without a court order, the child is born within 300 days after the termination of cohabitation.

(c) After the child's birth, he and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and either of the following is true:

(1) With his consent, he is named as the child's father on the child's birth certificate.

(2) He is obligated to support the child under a written voluntary promise or by court order.

(d) He receives the child into his home and openly holds out the child as his natural child.

(e) If the child was born and resides in a nation with which the United States engages in an Orderly Departure Program or successor program, he acknowledges that he is the child's father in a declaration under penalty of perjury, as specified in Section 2015.5 of the Code of Civil Procedure. This subdivision shall remain in effect only until January 1, 1997, and on that date shall become inoperative.

(f) The child is in utero after the death of the decedent and the conditions set forth in Section 249.5 of the Probate Code are satisfied.

SEC. 2. Section 7630 of the Family Code is amended to read:

7630. (a) A child, the child's natural mother, or a man presumed to be the child's father under subdivision (a), (b), or (c) of Section 7611, may bring an action as follows:

(1) At any time for the purpose of declaring the existence of the father and child relationship presumed under subdivision (a), (b), or (c) of Section 7611.

(2) For the purpose of declaring the nonexistence of the father and child relationship presumed under subdivision (a), (b), or (c) of Section 7611 only if the action is brought within a reasonable time after obtaining knowledge of relevant facts. After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party.

(b) Any interested party may bring an action at any time for the purpose of determining the existence or nonexistence of the father and child relationship presumed under subdivision (d) or (f) of Section 7611.

(c) An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under Section 7611 or whose presumed father is deceased may be brought by the child or personal representative of the child, the Department of Child Support Services, the mother or the personal representative or a parent of the mother if the mother has died or is a minor, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor.

(d) An action under subdivision (c) shall be consolidated with a proceeding pursuant to Section 7662 if a proceeding has been filed under

Chapter 5 (commencing with Section 7660). The parental rights of the alleged natural father shall be determined as set forth in Section 7664. The consolidated action shall be heard in the court in which the Section 7662 proceeding is filed, unless the court in which the action under subdivision (c) is filed finds, by clear and convincing evidence, that transferring the action to the other court poses a substantial hardship to the petitioner. Mere inconvenience does not constitute a sufficient basis for a finding of substantial hardship. If the court determines there is a substantial hardship, the consolidated action shall be heard in the court in which the paternity action is filed.

SEC. 2.3. Section 7650 of the Family Code is amended to read:

7650. (a) Any interested person may bring an action to determine the existence or nonexistence of a mother and child relationship. Insofar as practicable, the provisions of this part applicable to the father and child relationship apply.

(b) A woman is presumed to be the natural mother of a child if the child is in utero after the death of the decedent and the conditions set forth in Section 249.5 of the Probate Code are satisfied.

SEC. 2.5. Chapter 4.4 (commencing with Section 1644.7) is added to Division 2 of the Health and Safety Code, to read:

CHAPTER 4.4. GENETIC DEPOSITORIES

1644.7. Any entity that receives genetic material of a human being that may be used for conception shall provide to the person depositing his or her genetic material a form for use by the depositor that, if signed by the depositor, would satisfy the conditions set forth in Section 249.5 of the Probate Code, regarding the decedent's intent for the use of that material. The use of the form is not mandatory, and the form is not the exclusive means of expressing a depositor's intent. The form shall include advisements in substantially the following form:

''The use of this form for designating whether a child conceived after your death will be your heir is not mandatory. However, if you wish to allow a child conceived after your death to be considered as your heir (or beneficiary of other benefits such as life insurance or retirement) you must specify that in writing and you must sign that written expression of intent.

This specification can be revoked or amended only in writing signed by you (and not by spoken words).

You should consider how having a child conceived after your death affects your estate planning (including your will, trust, and other beneficiary designations for retirement benefits, life insurance, financial accounts, etc.) These issues can be complex, and you should discuss them with your attorney.''

1644.8. Any entity that receives genetic material of a human being that may be used for conception shall make available to the person depositing his or her genetic material a form that, if signed by the depositor, would revoke any previous expression of intent regarding the use of his or her genetic material necessary to satisfy the conditions set forth in Section 249.5 of the Probate Code. The use of the form is not mandatory, and the form is not the exclusive means of expressing a depositor's intent with respect to revocation or amendment of a prior expression of intent. The form shall include advisements in substantially the following form:

''The use of this form to revoke or amend a previous form for designating whether a child conceived after your death will be your heir is not mandatory. This specification can be revoked or amended only in a writing signed by you (and not by spoken words).

These issues can be complex, and you should discuss them with your attorney.''

1644.9. This chapter does not apply to the application of somatic nuclear transfer technology to the creation of a human being that shares all of its nuclear genes with the person donating the implanted nucleus, commonly known as human cloning. For purposes of this section, the phrase ''somatic cell nuclear transfer'' means the process in which the nucleus of a somatic cell of an organism is transferred into an enucleated oocyte.

SEC. 3. Section 10172 of the Insurance Code is amended to read:

10172. Notwithstanding Sections 751 and 1100 of the Family Code and Section 249.5 of the Probate Code, when the proceeds of, or payments under, a life insurance policy become payable and the insurer makes payment thereof in accordance with the terms of the policy, or in accordance with the terms of any written assignment thereof if the policy has been assigned, that payment shall fully discharge the insurer from all claims under the policy unless, before that payment is made, the insurer has received, at its home office, written notice by or on behalf of some other person that the other person claims to be entitled to that payment or some interest in the policy.

SEC. 4. Section 10172.5 of the Insurance Code is amended to read:

10172.5. (a) Notwithstanding any other provision of law, each insurer admitted to transact life insurance in this state that fails or refuses to pay the proceeds of, or payments under, any policy of life insurance issued by it within 30 days after the date of death of the insured shall pay interest, at a rate not less than the then current rate of interest on death proceeds left on deposit with the insurer computed from the date of the insured's death, on any moneys payable and unpaid after the expiration of that 30-day period. This section shall apply only to deaths of insureds which occur on or after January 1, 1976.

(b) Nothing in this section shall be construed to allow any insurer admitted to transact life insurance in this state to withhold payment of money payable under a life insurance policy to any beneficiary for a period longer than reasonably necessary to transmit that payment. Whenever possible payment shall be made within 30 days after the date of death of the insured.

(c) In any case in which interest on the proceeds of, or payments under, any policy of life insurance becomes payable pursuant to subdivision (a), the insurer shall notify the named beneficiary or beneficiaries at their last known address that interest will be paid on the proceeds of, or payments under, that policy from the date of death of the named insured. That notice shall specify the rate of interest to be paid. In any case where the notice required by Section 249.5 of the Probate Code has been given to a life insurer, that insurer is not required to provide the notice required by this section until after it has been notified that a child has actually been born within two years of the death of the decedent. The obligation shall be deemed satisfied by giving notice to the person who first provides proof to the insurer that the child has been born alive.

(d) This section shall not require the payment of interest in any case in which the beneficiary elects in writing delivered to the insurer to receive the proceeds of, or payments under, the policy by any means other than a lump-sum payment thereof.

SEC. 4.5. Section 10172.5 of the Insurance Code is amended to read:

10172.5. (a) Notwithstanding any other provision of law, each insurer admitted to transact life insurance, credit life insurance, or accidental death insurance in this state that fails or refuses to pay the proceeds of, or payments under, any policy of life insurance issued by it within 30 days after the date of death of the insured shall pay interest, at a rate not less than the then current rate of interest on death proceeds left on deposit with the insurer computed from the date of the insured's death, on any moneys payable and unpaid after the expiration of the 30-day period. This section shall apply only to deaths of insureds which occur on or after January 1, 1976.

(b) Nothing in this section shall be construed to allow any insurer admitted to transact life insurance, credit life insurance, or accidental death insurance in this state to withhold payment of money payable under a life insurance policy to any beneficiary for a period longer than reasonably necessary to transmit that payment. Whenever possible payment shall be made within 30 days after the date of death of the insured.

(c) In any case in which interest on the proceeds of, or payments under, any policy of life insurance, credit life insurance, or accidental

death insurance becomes payable pursuant to subdivision (a), the insurer shall notify the named beneficiary or beneficiaries at their last known address that interest will be paid on the proceeds of, or payments under, that policy from the date of death of the named insured. That notice shall specify the rate of interest to be paid. In any case where the notice required by Section 249.5 of the Probate Code has been given to a life insurer, that insurer is not required to provide the notice required by this section until after it has been notified that a child has actually been born within two years of the death of the decedent. The obligation shall be deemed satisfied by giving notice to the person who first provides proof to the insurer that the child has been born alive.

(d) This section shall not require the payment of interest in any case in which the beneficiary elects in writing delivered to the insurer to receive the proceeds of, or payments under, the policy by any means other than a lump-sum payment thereof.

SEC. 5. Section 249.5 is added to the Probate Code, to read:

249.5. For purposes of determining rights to property to be distributed upon the death of a decedent, a child of the decedent conceived after the death of the decedent shall be deemed to have been born in the lifetime of the decedent, and after the execution of all of the decedent's testamentary instruments, if the child or his or her representative proves by clear and convincing evidence that all of the following conditions are satisfied:

(a) The decedent, in writing, specifies that his or her genetic material shall be used for the posthumous conception of a child of the decedent, subject to the following:

(1) The specification shall be signed by the decedent and at least one competent witness.

(2) The specification may be revoked or amended only by a writing, signed by the decedent and at least one competent witness.

(3) The person designated by the decedent to use the genetic material shall be either of the following:

(A) The spouse or registered domestic partner of the decedent, as of the decedent's date of death.

(B) Some other person named in the specification as approved by the decedent to be the person designated by the decedent to use the genetic material for posthumous conception.

(b) The child or the child's representative has given written notice by certified mail, return receipt requested, that the decedent's genetic material was available for the purpose of posthumous conception. The notice shall have been given to a person who has the power to control the distribution of either the decedent's property or death benefits payable by reason of the decedent's death, within four months of the date of issuance of a certificate of the decedent's death or entry of a judgment

determining the fact of the decedent's death, whichever event occurs first.

(c) The child was in utero using the decedent's genetic material and was in utero within two years of the date of issuance of a certificate of the decedent's death or entry of a judgment determining the fact of the decedent's death, whichever event occurs first. This subdivision does not apply to a child who shares all of his or her nuclear genes with the person donating the implanted nucleus as a result of the application of somatic nuclear transfer technology commonly known as human cloning.

SEC. 6. Section 249.6 is added to the Probate Code, to read:

249.6. (a) Upon timely receipt of the notice required by Section 249.5 or actual knowledge by a person who has the power to control the distribution of either the decedent's property or death benefits payable by reason of the decedent's death, that person may not make a distribution of property or pay death benefits payable by reason of the decedent's death before two years following the date of issuance of a certificate of the decedent's death or entry of a judgment determining the fact of decedent's death, whichever event occurs first.

(b) Subdivision (a) does not apply to, and the distribution of property or the payment of benefits may proceed in a timely manner as provided by law with respect to, any property if the birth of a child of the decedent conceived after the death of the decedent will not have an effect on any of the following:

(1) The proposed distribution of the decedent's property.

(2) The payment of death benefits payable by reason of the decedent's death.

(3) The determination of rights to property to be distributed upon the death of the decedent.

(4) The right of any person to claim a probate homestead or probate family allowance.

(c) Subdivision (a) does not apply to, and the distribution of property or the payment of benefits may proceed in a timely manner as provided by law with respect to, any property if the person named in subparagraph (A) or (B) of paragraph (3) of subdivision (a) of Section 249.5 sends written notice by certified mail, return receipt requested, that the person does not intend to use the genetic material for the posthumous conception of a child of a decedent. This notice shall be signed by the person named in subparagraph (A) or (B) of paragraph (3) of subdivision (a) of Section 249.5 and at least one competent witness.

(d) A person who has the power to control the distribution of either the decedent's property or death benefits payable by reason of the decedent's death, shall incur no liability for making a distribution of property or paying death benefits if that person made a distribution of

property or paid death benefits prior to receiving notice or acquiring actual knowledge of the existence of genetic material available for posthumous conception purposes or the written notice required by subdivision (b) of Section 249.5.

SEC. 7. Section 249.7 is added to the Probate Code, to read:

249.7. If the written notice required pursuant to Section 249.5 is not given in a timely manner to any person who has the power to control the distribution of either the decedent's property or death benefits payable by reason of the decedent's death, that person may make the distribution in the manner provided by law as if any child of the decedent conceived after the death of the decedent had predeceased the decedent without heirs. Any child of a decedent conceived after the death of the decedent, or that child's representative, shall be barred from making a claim against either the person making the distribution or the recipient of the distribution when the claim is based on wrongful distribution and written notice has not been given in a timely manner pursuant to Section 249.5 to the person making that distribution.

SEC. 8. Section 249.8 is added to the Probate Code, to read:

249.8. Notwithstanding Section 249.6, any interested person may file a petition in the manner prescribed under Section 248 requesting a distribution of property of the decedent or death benefits payable by reason of decedent's death that are subject to the delayed distribution provisions of Section 249.6. The court may order distribution of all, or a portion of, the property or death benefits, if at the hearing it appears that distribution can be made without any loss to any interested person, including any loss, either actual or contingent, to a decedent's child who is conceived after the death of the decedent. The order for distribution shall be stayed until any bond required by the court is filed.

SEC. 9. Section 6453 of the Probate Code is amended to read:

6453. For the purpose of determining whether a person is a ''natural parent'' as that term is used in this chapter:

(a) A natural parent and child relationship is established where that relationship is presumed and not rebutted pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code).

(b) A natural parent and child relationship may be established pursuant to any other provisions of the Uniform Parentage Act, except that the relationship may not be established by an action under subdivision (c) of Section 7630 of the Family Code unless any of the following conditions exist:

(1) A court order was entered during the father's lifetime declaring paternity.

(2) Paternity is established by clear and convincing evidence that the father has openly held out the child as his own.

(3) It was impossible for the father to hold out the child as his own and paternity is established by clear and convincing evidence.

(c) A natural parent and child relationship may be established pursuant to Section 249.5.

SEC. 10. Section 4.5 of this bill incorporates amendments to Section 10172.5 of the Insurance Code proposed by both this bill and AB 2384. 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 10172.5 of the Insurance Code, and (3) this bill is enacted after AB 2384, in which case Section 4 of this bill shall not become operative.

CHAPTER 776

An act to amend Section 1265.1 of the Unemployment Insurance Code, relating to unemployment insurance.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 25, 2004.]

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

SECTION 1. Section 1265.1 of the Unemployment Insurance Code is amended to read:

1265.1. (a) Notwithstanding any other provision of this division, payments to an individual by an employer who has failed to provide the advance notice of facility closure required by the federal Worker Adjustment and Retraining Notification (WARN) Act (29 U.S.C. Sec. 2101 et seq.) or Chapter 4 (commencing with Section 1400) of Part 4 of Division 2 of the Labor Code may not be construed to be wages or compensation for personal services under this division.

(b) Benefits payable under this division may not be denied or reduced because of the receipt of payments related in any way to an employer's violation of the WARN Act or Chapter 4 (commencing with Section 1400) of Part 4 of Division 2 of the Labor Code.

CHAPTER 777

An act to add Section 11751.82 to the Insurance Code, relating to liability insurance.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 25, 2004.]

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

SECTION 1. Section 11751.82 is added to the Insurance Code, to read:

11751.82. (a) An insurer under a wrap-up insurance policy shall report workers' compensation losses and payroll information for each contractor and subcontractor to its rating organization on a timely basis and in accordance with the uniform statistical plan. Within 10 days, upon request, the insurer shall provide to each contractor and subcontractor copies of the report covering workers' compensation losses and payroll information for that contractor or subcontractor.

(b) For the purposes of this section, a ''wrap-up insurance policy'' is an insurance policy, or series of policies, written to cover risks associated with a work of improvement, as defined in Section 3106 of the Civil Code, and covering two or more of the contractors or subcontractors that work on that work of improvement.

CHAPTER 778

An act to add Section 8686.1 to the Government Code, relating to disaster relief, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 25, 2004.]

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

SECTION 1. Section 8686.1 is added to the Government Code, to read:

8686.1. (a) Notwithstanding subdivision (a) of Section 8686, the state share shall be up to 100 percent of total state eligible costs connected with the Middle River levee break in San Joaquin County that occurred in June 2004.

(b) For the disaster that the Legislature has designated in subdivision (a), the state shall assume the increased share specified in subdivision (a) if the Federal Emergency Management Agency or another applicable federal agency has approved the federal share of costs.

(c) The state shall make no allocation for any project application resulting in a state share of less than two thousand five hundred dollars ($2,500) 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:

In order to timely provide essential relief to those persons who have suffered damage or loss as a result of the Middle River levee break that occurred in San Joaquin County in June 2004 it is necessary that this act take effect immediately.

CHAPTER 779

An act to amend Sections 25123.3, 25200, 25200.15, 25245, 25250.1, and 25250.13 of the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 25, 2004.]

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

SECTION 1. Section 25123.3 of the Health and Safety Code is amended to read:

25123.3. (a) For purposes of this section, the following terms have the following meaning:

(1) ''Liquid hazardous waste'' means a hazardous waste that meets the definition of free liquids, as specified in Section 66260.10 of Title 22 of the California Code of Regulations, as that section read on January 1, 1994.

(2) ''Remediation waste staging'' means the temporary accumulation of non-RCRA contaminated soil that is generated and held onsite, and that is accumulated for the purpose of onsite treatment pursuant to a certified, authorized or permitted treatment method, such as a transportable treatment unit, if all of the following requirements are met:

(A) The hazardous waste being accumulated does not contain free liquids.

(B) The hazardous waste is accumulated on an impermeable surface, such as high density polyethylene (HDPE) of at least 20 mills that is supported by a foundation, or high density polyethylene of at least 60 mills that is not supported by a foundation.

(C) The generator provides controls for windblown dispersion and precipitation runoff and run-on and complies with any stormwater permit requirements issued by a regional water quality control board.

(D) The generator has the accumulation site inspected weekly and after storms to ensure that the controls for windblown dispersion and precipitation runoff and run-on are functioning properly.

(E) The staging area is certified by a registered engineer for compliance with the standards specified in subparagraphs (A) to (D), inclusive.

(3) ''Transfer facility'' means any offsite facility that is related to the transportation of hazardous waste, including, but not limited to, loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

(b) ''Storage facility'' means a hazardous waste facility at which the hazardous waste meets any of the following requirements:

(1) The hazardous waste is held for greater than 90 days at an onsite facility. The department may establish criteria and procedures to extend that 90-day period, consistent with the federal act, and to prescribe the manner in which the hazardous waste may be held if not otherwise prescribed by statute.

(2) The hazardous waste is held for any period of time at an offsite facility which is not a transfer facility.

(3) (A) Except as provided in subparagraph (B), the waste is held at a transfer facility and any one of the following apply:

(i) The transfer facility is located in an area zoned residential by the local planning authority.

(ii) The transfer facility commences initial operations on or after January 1, 2005, at a site located within 500 feet of a structure identified in subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (b) of Section 25232.

(iii) The hazardous waste is held for a period greater than six days at a transfer facility located in an area that is not zoned industrial or agricultural by the local planning authority.

(iv) The hazardous waste is held for a period greater than 10 days at a transfer facility located in an area zoned industrial or agricultural by the local planning authority.

(v) The hazardous waste is held for a period greater than six days at a transfer facility that commenced initial operations before January 1, 2005, is located in an area zoned agricultural by the local planning authority, and is located within 500 feet of a structure identified in subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (b) of Section 25232.

(B) (i) Notwithstanding subparagraph (A), a transfer facility located in an area that is not zoned residential by the local planning authority is not a storage facility, if the only hazardous waste held at the transfer facility is hazardous waste that is generated as a result of an emergency release and that hazardous waste is collected and temporarily stored by emergency rescue personnel, as defined in Section 25501, or by a response action contractor upon the request of emergency rescue

personnel or the response action contractor, and the holding of that hazardous waste is approved by the department.

(ii) For purposes of this subparagraph, ''response action contractor'' means any person who enters into a contract with the department to take removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) in response to a release or threatened release, including any subcontractors of the response action contractor.

(4) (A) Except as provided in subparagraph (B), the hazardous waste is held onsite for any period of time, unless the hazardous waste is held in a container, tank, drip pad, or containment building pursuant to regulations adopted by the department.

(B) Notwithstanding subparagraph (A), a generator that accumulates hazardous waste generated and held onsite for 90 days or less for offsite transportation is not a storage facility if all of the following requirements are met:

(i) The waste is non-RCRA contaminated soil.

(ii) The hazardous waste being accumulated does not contain free liquids.

(iii) The hazardous waste is accumulated on an impermeable surface, such as high density polyethylene (HDPE) of at least 20 mills that is supported by a foundation, or high density polyethylene of at least 60 mills that is not supported by a foundation.

(iv) The generator provides controls for windblown dispersion and precipitation runoff and run-on and complies with any stormwater permit requirements issued by a regional water quality control board.

(v) The generator has the accumulation site inspected weekly and after storms to ensure that the controls for windblown dispersion and precipitation runoff and run-on are functioning properly.

(vi) The generator, after final offsite transportation, inspects the accumulation site for contamination and remediates as necessary.

(vii) The site is certified by a registered engineer for compliance with the standards specified in clauses (i) to (vi), inclusive.

(5) The hazardous waste is held at a transfer facility at any location for any period of time in a manner other than in a container.

(6) The hazardous waste is held at a transfer facility at any location for any period of time and handling occurs. For purposes of this paragraph, ''handling'' does not include the transfer of packaged or containerized hazardous waste from one vehicle to another.

(c) The time period for calculating the 90-day period for purposes of paragraph (1) of subdivision (b), or the 180-day or 270-day period for purposes of subdivision (h), begins when the facility has accumulated 100 kilograms of hazardous waste or one kilogram of extremely hazardous waste or acutely hazardous waste. However, if the facility generates more than 100 kilograms of hazardous waste or one kilogram

of extremely hazardous waste or acutely hazardous waste during any calendar month, the time period begins when any amount of hazardous waste first begins to accumulate in that month.

(d) Notwithstanding paragraph (1) of subdivision (b), a generator of hazardous waste that accumulates waste onsite is not a storage facility if all of the following requirements are met:

(1) The generator accumulates a maximum of 55 gallons of hazardous waste, one quart of acutely hazardous waste, or one quart of extremely hazardous waste at an initial accumulation point that is at or near the area where the waste is generated and that is under the control of the operator of the process generating the waste.

(2) The generator accumulates the waste in containers other than tanks.

(3) The generator does not hold the hazardous waste onsite without a hazardous waste facilities permit or other grant of authorization for a period of time longer than the shorter of the following time periods:

(A) One year from the initial date of accumulation.

(B) Ninety days, or if subdivision (h) is applicable, 180 or 270 days, from the date that the quantity limitation specified in paragraph (1) is reached.

(4) The generator labels any container used for the accumulation of hazardous waste with the initial date of accumulation and with the words ''hazardous waste'' or other words that identify the contents of the container.

(5) Within three days of reaching any applicable quantity limitation specified in paragraph (1), the generator labels the container holding the accumulated hazardous waste with the date the quantity limitation was reached and either transports the waste offsite or holds the waste onsite and complies with either the regulations adopted by the department establishing requirements for generators subject to the time limit specified in paragraph (1) of subdivision (b) or the requirements specified in paragraph (1) of subdivision (h), whichever requirements are applicable.

(6) The generator complies with regulations adopted by the department pertaining to the use and management of containers and any other regulations adopted by the department to implement this subdivision.

(e) (1) Notwithstanding paragraphs (1) and (4) of subdivision (b), hazardous waste held for remediation waste staging shall not be considered to be held at a hazardous waste storage facility if the total accumulation period is one year or less from the date of the initial placing of hazardous waste by the generator at the staging site for onsite remediation, except that the department may grant one six-month extension, upon a showing of reasonable cause by the generator.

(2) (A) The generator shall submit a notification of plans to store and treat hazardous waste onsite pursuant to paragraph (2) of subdivision (a), in person or by certified mail, with return receipt requested, to the department and to one of the following:

(i) The CUPA, if the generator is under the jurisdiction of a CUPA.

(ii) If the generator is not under the jurisdiction of a CUPA, the notification shall be submitted to the agency authorized, pursuant to subdivision (f) of Section 25404.3, to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404.

(B) If, after the notification pursuant to subparagraph (A), or during the initial year or the six-month extension granted by the department, the generator determines that treatment cannot be accomplished for all, or part of, the hazardous waste accumulated in a remediation waste staging area, the generator shall immediately notify the department and the appropriate local agency, pursuant to subparagraph (A), that the treatment has been discontinued. The generator shall then handle and dispose of the hazardous waste in accordance with paragraph (4) of subdivision (b).

(C) A generator shall not hold hazardous waste for remediation waste staging unless the generator can show, through laboratory testing, bench scale testing, or other documentation, that soil held for remediation waste staging is potentially treatable. Any fines and penalties imposed for a violation of this subparagraph may be imposed beginning with the 91st day that the hazardous waste was initially accumulated.

(3) Once an onsite treatment operation is completed on hazardous waste held pursuant to paragraph (1), the generator shall inspect the staging area for contamination and remediate as necessary.

(f) Notwithstanding any other provision of this chapter, remediation waste staging and the holding of non-RCRA contaminated soil for offsite transportation in accordance with paragraph (4) of subdivision (b) shall not be considered to be disposal or land disposal of hazardous waste.

(g) A generator who holds hazardous waste for remediation waste staging pursuant to paragraph (2) of subdivision (a) or who holds hazardous waste onsite for offsite transportation pursuant to paragraph (4) of subdivision (b) shall maintain records onsite that demonstrate compliance with this section related to storing hazardous waste for remediation waste staging or related to holding hazardous waste onsite for offsite transportation, as applicable. The records maintained pursuant to this subdivision shall be available for review by any public agency authorized pursuant to Section 25180 or 25185.

(h) (1) Notwithstanding paragraph (1) of subdivision (b), a generator of less than 1,000 kilograms of hazardous waste in any calendar month

who accumulates hazardous waste onsite for 180 days or less, or 270 days or less if the generator transports the generator's own waste, or offers the generator's waste for transportation, over a distance of 200 miles or more, for offsite treatment, storage, or disposal, is not a storage facility if all of the following apply:

(A) The quantity of hazardous waste accumulated onsite never exceeds 6,000 kilograms.

(B) The generator complies with the requirements of subdivisions (d), (e), and (f) of Section 262.34 of Title 40 of the Code of Federal Regulations.

(C) The generator does not hold acutely hazardous waste or extremely hazardous waste in an amount greater than one kilogram for a time period longer than that specified in paragraph (1) of subdivision (b).

(2) A generator meeting the requirements of paragraph (1) who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the facility to which the generator's waste is submitted, within 60 days from the date that the hazardous waste was accepted by the initial transporter, shall submit to the department a legible copy of the manifest, with some indication that the generator has not received confirmation of delivery.

(i) The department may adopt regulations that set forth additional restrictions and enforceable management standards that protect human health and the environment and that apply to persons holding hazardous waste at a transfer facility. A regulation adopted pursuant to this subdivision 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, and may be adopted as an emergency regulation in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 2. Section 25200 of the Health and Safety Code is amended to read:

25200. (a) The department shall issue hazardous waste facilities permits to use and operate one or more hazardous waste management units at a facility that in the judgment of the department meet the building standards published in the State Building Standards Code relating to hazardous waste facilities and the other standards and requirements adopted pursuant to this chapter. The department shall impose conditions on each hazardous waste facilities permit specifying the types of hazardous wastes that may be accepted for transfer, storage, treatment, or disposal. The department may impose any other conditions on a hazardous waste facilities permit that are consistent with the intent of this chapter.

(b) The department may impose, as a condition of a hazardous waste facilities permit, a requirement that the owner or operator of a hazardous waste facility that receives hazardous waste from more than one producer comply with any order of the director that prohibits the facility operator from refusing to accept a hazardous waste based on geographical origin that is authorized to be accepted and may be accepted by the facility without extraordinary hazard.

(c) (1) (A) Any hazardous waste facilities permit issued by the department shall be for a fixed term, which shall not exceed 10 years for any land disposal facility, storage facility, incinerator, or other treatment facility.

(B) Before the fixed term of a permit expires, the owner or operator of a facility intending to extend the term of the facility's permit shall submit a complete Part A application for a permit renewal. At any time following the submittal of the Part A application, the owner or operator of a facility shall submit a complete Part B application, or any portion thereof, as well as any other relevant information, as and when requested by the department. To the extent not inconsistent with the federal act, when a complete Part A renewal application, and any other requested information, has been submitted before the end of the permit's fixed term, the permit is deemed extended until the renewal application is approved or denied and the owner or operator has exhausted all applicable rights of appeal.

(C) This section does not limit or restrict the department's authority to impose any additional or different conditions on an extended permit that are necessary to protect human health and the environment.

(D) In adopting new conditions for an extended permit, the department shall follow the applicable permit modification procedures specified in this chapter and the regulations adopted pursuant to this chapter.

(E) When prioritizing pending renewal applications for processing and in determining the need for any new conditions on an extended permit, the department shall consider any input received from the public.

(2) The department shall review each hazardous waste facilities permit for a land disposal facility five years after the date of issuance or reissuance, and shall modify the permit, as necessary, to assure that the facility continues to comply with the currently applicable requirements of this chapter and the regulations adopted pursuant to this chapter.

(3) This subdivision does not prohibit the department from reviewing, modifying, or revoking a permit at any time during its term.

(d) (1) When reviewing any application for a permit renewal, the department shall consider improvements in the state of control and measurement technology as well as changes in applicable regulations.

(2) Each permit issued or renewed under this section shall contain the terms and conditions that the department determines necessary to protect human health and the environment.

(e) A permit issued pursuant to the federal act by the Environmental Protection Agency in the state for which no state hazardous waste facilities permit has been issued shall be deemed to be a state permit enforceable by the department until a state permit is issued. In addition to complying with the terms and conditions specified in a federal permit deemed to be a state permit pursuant to this section, an owner or operator who holds that permit shall comply with the requirements of this chapter and the regulations adopted by the department to implement this chapter.

SEC. 3. Section 25200.15 of the Health and Safety Code is amended to read:

25200.15. (a) The owner or operator of a facility that has a hazardous waste facilities permit issued pursuant to Section 25200 may change facility structures or equipment without modifying the facility's hazardous waste facilities permit, if either of the following apply:

(1) The change to structures or equipment is not within a permitted unit.

(2) Both of the following apply to the change to the structures or equipment:

(A) The change to structures or equipment is within the boundary of a permitted unit, and the structure or equipment is certified by the owner or operator not to be actively related to the treatment, storage, or disposal of hazardous waste, or the secondary containment of those hazardous wastes.

(B) The department, within 30 days from the date of receipt of notice from the owner or operator, does not determine any of the following:

(i) The change is related to the treatment, storage, or disposal of hazardous waste or the secondary containment of those hazardous wastes.

(ii) The change may otherwise significantly increase risks to human health and safety or the environment related to the management of the hazardous wastes.

(iii) The regulations adopted pursuant to the federal act require a permit modification for the change.

(b) (1) To the extent consistent with the federal act, and the regulations adopted pursuant to the federal act, the owner or operator of a facility that has a hazardous waste facilities permit issued pursuant to Section 25200 or 25201.6 may change the facility structure or equipment utilizing the Class 1* permit modification, specified in Chapter 20 (commencing with Section 66270.10) of Division 4.5 of Title 22 of the California Code of Regulations, as adopted by the department, if the department determines that all of the following apply:

(A) The change to the structure or equipment is necessary to comply with requirements or the request of a state or federal agency or an air quality management district or air pollution control district.

(B) The change to the structure or equipment will decrease one or more risks, and will not result in any increased risks to human health and safety or the environment related to the management of the hazardous wastes in the structure or equipment.

(C) The owner or operator has submitted sufficient information for the department to make the determinations required by subparagraphs (A) and (B) to comply with the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code, the California Environmental Quality Act.

(2) A change to a facility structure or equipment that is authorized by this subdivision may not result in an increase in the permitted capacity of a hazardous waste management unit affected by the change.

(3) This subdivision does not apply to changes for which no permit modification is required pursuant to subdivision (a) and the regulations adopted to implement that subdivision.

(4) This subdivision does not apply to changes classified as Class 1 or Class 1* under the department's regulations pursuant to Chapter 20 (commencing with Section 66270.10) of Division 4.5 of Title 22 of the California Code of Regulations.

(5) The owner or operator of a facility applying for a ''Class 1* permit modification'' pursuant to this subdivision shall enter into a written agreement with the department pursuant to which that person shall reimburse the department, pursuant to Article 9.2 (commencing with Section 25206.1), for the costs incurred by the department in processing the application.

(c) Any determination made pursuant to this section, including, but not limited to, any determination by the department regarding the classification of a permit modification, may be appealed by the owner or operator in the manner provided for appeal of a permit determination pursuant to the regulations adopted by the department.

SEC. 4. Section 25245 of the Health and Safety Code is amended to read:

25245. (a) The department shall adopt, and revise when appropriate, standards and regulations which shall do both of the following:

(1) Specify the financial assurances to be provided by the owner or operator of a hazardous waste facility that are necessary to respond adequately to damage claims arising out of the operation of that type of facility and to provide for the cost of closure and subsequent maintenance of the facility, including, but not limited to, the monitoring of groundwater and other aspects of the environment after closure. If the

facility is required to obtain a permit under the federal act, the financial assurance shall be a trust fund, surety bond, letter of credit, insurance, or any other mechanism authorized under the federal act and the regulations adopted pursuant to the federal act. If the facility is not required to obtain a permit under the federal act, the financial assurance may include any other equivalent financial arrangement acceptable to the department.

(2) Provide that every hazardous waste facility can be closed and maintained for at least 30 years subsequent to its closure in a manner that protects human health and the environment and minimizes or eliminates the escape of hazardous waste constituents, leachate, contaminated rainfall, and waste decomposition products to ground and surface waters and to the atmosphere.

(b) In adopting regulations pursuant to subdivision (a), to carry out the purposes of this chapter, the department may specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing evidence of financial responsibility.

(1) If an owner or operator is in bankruptcy, reorganization, or other arrangement pursuant to Title 11 of the United States Code, or where, with reasonable diligence, jurisdiction in any state or federal court cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which this section requires evidence of financial responsibility may be asserted directly against the guarantor who provided the evidence of financial responsibility.

(2) The total liability of any guarantor is limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this chapter.

(3) This subdivision does not limit any other state or federal statutory, contractual, or common law liability of a guarantor to the owner or operator, including, but not limited to, the liability of the guarantor for bad faith in either negotiating or in failing to negotiate the settlement of any claim.

(4) This subdivision does not diminish the liability of any person under Section 107 or 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Secs. 9607 and 9611).

(5) For purposes of this subdivision, ''guarantor'' means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this section.

SEC. 5. Section 25250.1 of the Health and Safety Code is amended to read:

25250.1. (a) As used in this article, the following terms have the following meaning:

(1) (A) ''Used oil'' means all of the following:

(i) Oil that has been refined from crude oil, or any synthetic oil, that has been used, and, as a result of use or as a consequence of extended storage, or spillage, has been contaminated with physical or chemical impurities.

(ii) Material that is subject to regulation as used oil under Part 279 (commencing with Section 279.1) of Subchapter I of Chapter 1 of Title 40 of the Code of Federal Regulations.

(B) Examples of used oil are spent lubricating fluids that have been removed from an engine crankcase, transmission, gearbox, or differential of an automobile, bus, truck, vessel, plane, heavy equipment, or machinery powered by an internal combustion engine; industrial oils, including compressor, turbine, and bearing oil; hydraulic oil; metalworking oil; refrigeration oil; and railroad drainings.

(C) ''Used oil'' does not include any of the following:

(i) Oil that has a flashpoint below 100 degrees Fahrenheit or that has been mixed with hazardous waste, other than minimal amounts of vehicle fuel.

(ii) (I) Wastewater, the discharge of which is subject to regulation under either Section 307(b) (33 U.S.C. Sec. 1317(b)) or Section 402 (33 U.S.C. Sec. 1342) of the federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.), including wastewaters at facilities that have eliminated the discharge of wastewater, contaminated with de minimis quantities of used oil.

(II) For purposes of this clause, ''de minimis quantities of used oil'' are small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations, or small amounts of oil lost to the wastewater treatment system during washing or draining operations.

(III) This exception does not apply if the used oil is discarded as a result of abnormal manufacturing operations resulting in substantial leaks, spills, or other releases or to used oil recovered from wastewaters.

(iii) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.

(iv) Oil that contains polychlorinated biphenyls (PCBs) at a concentration of 5 ppm or greater.

(v) (I) Oil containing more than 1000 ppm total halogens, which shall be presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in Subpart D (commencing with Section 261.30) of Part 261 of Subchapter I of Chapter 1 of Title 40 of the Code of Federal Regulations.

(II) A person may rebut the presumption specified in subclause (I) by demonstrating that the used oil does not contain hazardous waste, including, but not limited to, in the manner specified in subclause (III).

(III) The presumption specified in subclause (I) is rebutted if it is demonstrated that the used oil that is the source of total halogens at a concentration of more than 1000 ppm is solely either household waste, as defined in Section 261.4(b)(1) of Title 40 of the Code of Federal Regulations, or is collected from conditionally exempt small quantity generators, as defined in Section 261.5 of Title 40 of the Code of Federal Regulations. Nothing in this subclause authorizes any person to violate the prohibition specified in Section 25250.7.

(2) ''Board'' means the California Integrated Waste Management Board.

(3) (A) ''Recycled oil'' means any oil that meets all of the following requirements specified in clauses (i) to (iii), inclusive:

(i) Is produced either solely from used oil, or is produced solely from used oil that has been mixed with one or more contaminated petroleum products or oily wastes, other than wastes listed as hazardous under the federal act, provided that if the resultant mixture is subject to regulation as a hazardous waste under Section 279.10(b)(2) of Title 40 of the Code of Federal Regulations, the mixture is managed as a hazardous waste in accordance with all applicable hazardous waste regulations, and the recycled oil produced from the mixture is not subject to regulation as a hazardous waste under Section 279.10(b)(2) of Title 40 of the Code of Federal Regulations. If the oily wastes with which the used oil is mixed were recovered from a unit treating hazardous wastes that are not oily wastes, these recovered oily wastes are not excluded from being considered as oily wastes for purposes of this section or Section 25250.7.

(ii) The recycled oil meets one of the following requirements:

(I) The recycled oil is produced by a generator lawfully recycling its oil.

(II) The recycled oil is produced at a used oil recycling facility that is authorized to operate pursuant to Section 25200 or 25200.5 solely by means of one or more processes specifically authorized by the department. The department may not authorize a used oil recycling facility to use a process in which used oil is mixed with one or more contaminated petroleum products or oily wastes unless the department determines that the process to be authorized for mixing used oil with those products or wastes will not substantially contribute to the achievement of compliance with the specifications of subparagraph (B).

(III) The recycled oil is produced in another state, and the used oil recycling facility where the recycled oil is produced, and the process by which the recycled oil is produced, are authorized by the agency authorized to implement the federal act in that state.

(iii) Has been prepared for reuse and meets all of the following standards:

(I) The oil meets the standards of purity set forth in subparagraph (B).

(II) If the oil was produced by a generator lawfully recycling its oil or the oil is lawfully produced in another state, the oil is not hazardous pursuant to the criteria adopted by the department pursuant to Section 25141 for any characteristic or constituent other than those listed in subparagraph (B).

(III) The oil is not mixed with any waste listed as a hazardous waste in Part 261 (commencing with Section 261.1) of Subchapter I of Chapter 1 of Title 40 of the Code of Federal Regulations.

(IV) The oil is not subject to regulation as a hazardous waste under the federal act.

(V) If the oil was produced lawfully at a used oil recycling facility in this state, the oil is not hazardous pursuant to any characteristic or constituent for which the department has made the finding required by subparagraph (B) of paragraph (2) of subdivision (a) of Section 25250.19, except for one of the characteristics or constituents identified in the standards of purity set forth in subparagraph (B).

(B) The following standards of purity are in effect for recycled oil, in liquid form, unless the department, by regulation, establishes more stringent standards:

(i) Flashpoint: minimum standards set by the American Society for Testing and Materials for the recycled products. However, recycled oil to be burned for energy recovery shall have a minimum flashpoint of 100 degrees Fahrenheit.

(ii) Total lead: 50 mg/kg or less.

(iii) Total arsenic: 5 mg/kg or less.

(iv) Total chromium: 10 mg/kg or less.

(v) Total cadmium: 2 mg/kg or less.

(vi) Total halogens: 3000 mg/kg or less. However, recycled oil shall be demonstrated by testing to contain not more than 1000 mg/kg total halogens listed in Appendix VIII of Part 261 (commencing with Section 261.1) of Subchapter I of Chapter 1 of Title 40 of the Code of Federal Regulations.

(vii) Total polychlorinated biphenyls (PCBs): less than 2 mg/kg.

(C) Compliance with the specifications of subparagraph (B) or with the requirements of clauses (iv) and (v) of subparagraph (B) of paragraph (1) shall not be met by blending or diluting used oil with crude or virgin oil, or with a contaminated petroleum product or oily waste, except as provided in subclause (II) of clause (ii) of subparagraph (A), and shall be determined in accordance with the procedures for identification and listing of hazardous waste adopted in regulations by the department. Persons authorized by the department to recycle oil shall maintain records of volumes and characteristics of incoming used oil and outgoing recycled oil and documentation concerning the recycling technology utilized to demonstrate to the satisfaction of the department

or other enforcement agencies that the recycling has been achieved in compliance with this subdivision.

(D) This paragraph does not apply to oil that is to be disposed of or used in a manner constituting disposal.

(4) ''Used oil recycling facility'' means a facility that reprocesses or re-refines used oil.

(5) ''Used oil storage facility'' means a storage facility, as defined in subdivision (b) of Section 25123.3, that stores used oil.

(6) ''Used oil transfer facility'' means a transfer facility, as defined in subdivision (a) of Section 25123.3, that meets the qualifications to be a storage facility, for purposes of Section 25123.3.

(7) (A) For purposes of this section and Section 25250.7 only, ''contaminated petroleum product'' means a product that meets all of the following conditions:

(i) It is a hydrocarbon product whose original intended purpose was to be used as a fuel, lubricant, or solvent.

(ii) It has not been used for its original intended purpose.

(iii) It is not listed in Subpart D (commencing with Section 251.30) of Part 261 of Subchapter I of Chapter 1 of Title 40 of the Code of Federal Regulations.

(iv) It has not been mixed with a hazardous waste other than another contaminated petroleum product.

(B) Nothing in this section or Section 25250.7 shall be construed to affect the exemptions in Section 25250.3, or to subject contaminated petroleum products that are not hazardous waste to any requirements of this chapter.

(b) Unless otherwise specified, used oil that meets either of the following conditions is not subject to regulation by the department:

(1) The used oil has not been treated by the generator of the used oil, the generator claims the used oil is exempt from regulation by the department, and the used oil meets all of the following conditions:

(A) The used oil meets the standards set forth in subparagraph (B) of paragraph (3) of subdivision (a).

(B) The used oil is not hazardous pursuant to the criteria adopted by the department pursuant to Section 25141 for any characteristic or constituent other than those listed in subparagraph (B) of paragraph (3) of subdivision (a).

(C) The used oil is not mixed with any waste listed as a hazardous waste in Part 261 (commencing with Section 261.1) of Subchapter I of Chapter 1 of Title 40 of the Code of Federal Regulations.

(D) The used oil is not subject to regulation as either hazardous waste or used oil under the federal act.

(E) The generator of the used oil has complied with the notification requirements of subdivision (c) and the testing and recordkeeping requirements of Section 25250.19.

(F) The used oil is not disposed of or used in a manner constituting disposal.

(2) The used oil meets all the requirements for recycled oil specified in paragraph (3) of subdivision (a), the requirements of subdivision (c), and the requirements of Section 25250.19.

(c) Used oil recycling facilities and generators lawfully recycling their own used oil that are the first to claim that recycled oil meets the requirements specified in paragraph (2) of subdivision (b) shall maintain an operating log and copies of certification forms, as specified in Section 25250.19. Any person who generates used oil, and who claims that the used oil is exempt from regulation pursuant to paragraph (1) of subdivision (b), shall notify the department, in writing, of that claim and shall comply with the testing and recordkeeping requirements of Section 25250.19 prior to its reuse. In any action to enforce this article, the burden is on the generator or recycling facility, whichever first claimed that the used oil or recycled oil meets the standards and criteria, and on the transporter or the user of the used oil or recycled oil, whichever has possession, to prove that the oil meets those standards and criteria.

(d) Used oil shall be managed in accordance with the requirements of this chapter and any additional applicable requirements of Part 279 (commencing with Section 279.1) of Subchapter I of Chapter 1 of Title 40 of the Code of Federal Regulations.

SEC. 6. Section 25250.13 of the Health and Safety Code is amended to read:

25250.13. Notwithstanding any provision of this chapter, a transfer facility, as defined in paragraph (3) of subdivision (a) of Section 25123.3, that accepts used oil and holds the oil for more than 24 hours, but is not otherwise a storage facility, as defined in subdivision (b) of Section 25123.3, shall comply with the requirements for used oil transfer facilities that are specified in Subpart E (commencing with Section 279.40) of Part 279 of Title 40 of the Code of Federal Regulations.

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

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CHAPTER 780

An act to amend Section 422.7 of the Penal Code, relating to crimes.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 25, 2004.]

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

SECTION 1. Section 422.7 of the Penal Code is amended to read:

422.7. Except in the case of a person punished under Section 422.6, any crime that is not made punishable by imprisonment in the state prison shall be punishable by imprisonment in the state prison or in a county jail not to exceed one year, by a fine not to exceed ten thousand dollars ($10,000), or by both that imprisonment and fine, if the crime is committed against the person or property of another for the purpose of intimidating or interfering with that other person's free exercise or enjoyment of any right secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States and because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because the defendant perceives that the other person has one or more of those characteristics, under any of the following circumstances, which shall be charged in the accusatory pleading:

(a) The crime against the person of another either includes the present ability to commit a violent injury or causes actual physical injury.

(b) The crime against property causes damage in excess of four hundred dollars ($400).

(c) The person charged with a crime under this section has been convicted previously of a violation of subdivision (a) or (b) of Section 422.6, or has been convicted previously of a conspiracy to commit a crime described in subdivision (a) or (b) of Section 422.6.

SEC. 1.1. Section 422.7 of the Penal Code is amended to read:

422.7. Except in the case of a person punished under Section 422.6, any hate crime that is not made punishable by imprisonment in the state prison shall be punishable by imprisonment in the state prison or in a county jail not to exceed one year, by a fine not to exceed ten thousand dollars ($10,000), or by both that imprisonment and fine, if the crime is committed against the person or property of another for the purpose of intimidating or interfering with that other person's free exercise or enjoyment of any right secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States under any of the following circumstances, which shall be charged in the accusatory pleading:

(a) The crime against the person of another either includes the present ability to commit a violent injury or causes actual physical injury.

(b) The crime against property causes damage in excess of four hundred dollars ($400).

(c) The person charged with a crime under this section has been convicted previously of a violation of subdivision (a) or (b) of Section 422.6, or has been convicted previously of a conspiracy to commit a crime described in subdivision (a) or (b) of Section 422.6.

SEC. 2. Section 1.1 of this bill incorporates amendments to Section 422.7 of the Penal Code proposed by both this bill and SB 1234. 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 422.7 of the Penal Code, and (3) this bill is enacted after SB 1234, in which case Section 1 of this bill shall not become operative.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 781

An act to repeal Section 43024 of the Health and Safety Code, and to amend Sections 25748 and 25751 of, and to repeal Chapter 7.2 (commencing with Section 25625) of Division 15 of, the Public Resources Code, relating to energy resources, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 25, 2004.]

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

SECTION 1. Section 43024 of the Health and Safety Code is repealed.

SEC. 2. Chapter 7.2 (commencing with Section 25625) of Division 15 of the Public Resources Code is repealed.

SEC. 3. Section 25748 of the Public Resources Code is amended to read:

25748. (a) The commission shall report to the Legislature on or before November 1, 2005, and annually thereafter, regarding the results of the mechanisms funded pursuant to this chapter. The report shall contain all of the following:

(1) A description of the allocation of funds among existing, new, and emerging technologies, the allocation of funds among programs, including consumer-side incentives, and the need for the reallocation of money among those technologies.

(2) The status of account transfers and repayments.

(3) A description of the cumulative commitment of claims by account, the relative demand for funds by account, and a forecast of future awards.

(4) A list identifying the types and quantities of biomass fuels used by facilities receiving funds pursuant to Section 25743 and their impacts on improving air quality.

(5) A discussion of the progress being made toward achieving the targets established under Section 25740 by each funding category authorized pursuant to this chapter.

(6) A description of the allocation of funds from interest on the accounts described in this chapter, and money in the accounts described in subdivision (b) of Section 25751.

(7) An itemized list, including project descriptions, award amounts, and outcomes for projects awarded funding in the prior year.

(8) Other matters the commission determines may be of importance to the Legislature.

(b) Money may be reallocated without further legislative action among existing, new, and emerging technologies and consumer-side programs in a manner consistent with the report and with the latest report provided to the Legislature pursuant to this section, except that reallocations may not reduce the allocation established in Section 25743 nor increase the allocation established in Section 25742.

SEC. 4. Section 25751 of the Public Resources Code is amended to read:

25751. (a) The Renewable Resource Trust Fund is hereby created in the State Treasury.

(b) The following accounts are hereby established within the Renewable Resource Trust Fund:

(1) The Existing Renewable Resources Account.

(2) New Renewable Resources Account.

(3) Emerging Renewable Resources Account.

(4) Customer-Credit Renewable Resource Purchases Account.

(5) Renewable Resources Consumer Education Account.

(c) The money in the fund may be expended for the state's administration of this article only upon appropriation by the Legislature in the annual Budget Act.

(d) Notwithstanding Section 383, that portion of revenues collected by electrical corporations for the benefit of in-state operation and development of existing and new and emerging renewable resource technologies, pursuant to Section 399.8 of the Public Utilities Code, shall be transmitted to the commission at least quarterly for deposit in the Renewable Resource Trust Fund pursuant to Section 399.6 of the Public Utilities Code. After setting aside in the fund money that may be needed for expenditures authorized by the annual Budget Act in accordance with subdivision (c), the Treasurer shall immediately deposit money received pursuant to this section into the accounts created pursuant to subdivision (b) in proportions designated by the commission for the current calendar year. Notwithstanding Section 13340 of the Government Code, the money in the fund and the accounts within the fund are hereby continuously appropriated to the commission without regard to fiscal year for the purposes enumerated in this chapter.

(e) Upon notification by the commission, the Controller shall pay all awards of the money in the accounts created pursuant to subdivision (b) for purposes enumerated in this chapter. The eligibility of each award shall be determined solely by the commission based on the procedures it adopts under this chapter. Based on the eligibility of each award, the commission shall also establish the need for a multiyear commitment to any particular award and so advise the Department of Finance. Eligible awards submitted by the commission to the Controller shall be accompanied by information specifying the account from which payment should be made and the amount of each payment; a summary description of how payment of the award furthers the purposes enumerated in this chapter; and an accounting of future costs associated with any award or group of awards known to the commission to represent a portion of a multiyear funding commitment.

(f) The commission may transfer funds between accounts for cashflow purposes, provided that the balance due each account is restored and the transfer does not adversely affect any of the accounts.

(g) The Department of Finance, commencing March 1, 1999, shall conduct an independent audit of the Renewable Resource Trust Fund and its related accounts annually, and provide an audit report to the Legislature not later than March 1 of each year for which this article is operative. The Department of Finance's report shall include information regarding revenues, payment of awards, reserves held for future commitments, unencumbered cash balances, and other matters that the Director of Finance determines may be of importance to the Legislature.

SEC. 5. The report required by Section 25748 of the Public Resources Code shall be prepared by the State Energy Resources Conservation and Development Commission in lieu of the annual report required by Item 3360-001-0381 of the Supplemental Budget Report of the Budget Act of 1999.

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 consolidate reporting requirements and reduce unnecessary expenditures, it is necessary that this act take effect immediately.

CHAPTER 782

An act to amend Sections 23809 and 24654 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 25, 2004.]

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

SECTION 1. Section 23809 of the Revenue and Taxation Code is amended to read:

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

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

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

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

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

(d) (1) For corporations described in paragraph (2), the provisions of Sections 1374(c)(1) and 1374(d)(7) of the Internal Revenue Code apply, based upon the effective date of the election to be treated as an ''S'' corporation for federal tax purposes, regardless of the date on which the corporation became an ''S'' corporation for state tax purposes.

(2) This subdivision applies to a corporation that, for its last taxable year beginning before January 1, 2002, was an ''S'' corporation for federal tax purposes and a ''C'' corporation for purposes of Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), and this part, and, as a result of the enactment of Chapter 35 of the Statutes of 2002, is an ''S'' corporation for the corporation's taxable years beginning on or after January 1, 2002.

(e) The amendments to this section made by the act adding this subdivision shall apply to taxable years beginning on or after January 1, 2002.

SEC. 2. Section 24654 of the Revenue and Taxation Code is amended to read:

24654. (a) Section 448 of the Internal Revenue Code, relating to limitation on use of cash method of accounting, shall apply, except as otherwise provided.

(b) For purposes of applying Section 448 of the Internal Revenue Code, Sections 801(d)(2), 801(d)(3), and 801(d)(5) of the Tax Reform Act of 1986 (Public Law 99-514), as modified by Section 1008(a) of Public Law 100-647, shall apply to each taxable year beginning on or after January 1, 1987.

(c) For purposes of applying Section 448 of the Internal Revenue Code, Section 403(a) of the Job Creation and Worker Assistance Act of 2002 (Public Law 107-147) shall apply to each taxable year beginning on or after January 1, 2003.

SEC. 3. The Legislature finds and declares that the application of this act to taxable years beginning on and after January 1, 2002, serves a public purpose by ensuring the fair and consistent application of California tax law, and by avoiding possible legal challenges to that law or its application.

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 783

An act to add Section 12237 to the Government Code, relating to State Archives.

[Approved by Governor September 24, 2004. Filed with
Secretary of State September 25, 2004.]

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

SECTION 1. Section 12237 is added to the Government Code, to read:

12237. (a) Notwithstanding any provision of Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1, any provision of law that exempts from public disclosure any item in the custody of the State Archives shall not apply to that item 75 years after the item was created, irrespective of the origin of the item, the manner in which it was deposited with the State Archives, or any other condition or circumstance at the time the item was deposited.

(b) Subdivision (a) shall apply to any item currently in the custody of the State Archives and any item deposited in the State Archives after the effective date of this section.

(c) The State Archives shall notify any party who deposits any item in the State Archives after the effective date of this section of the provisions of subdivision (a).

(d) The Secretary of State's Internet Web site shall include a public notice stating that on or after January 1, 2005, all items 75 years old or older that are on deposit in the State Archives shall be accessible to the public.

CHAPTER 784

An act to amend Section 54954.5 of, and to add Section 54956.96 to, the Government Code, relating to public agencies.

[Approved by Governor September 24, 2004. Filed with
Secretary of State September 25, 2004.]

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

SECTION 1. Section 54954.5 of the Government Code is amended to read:

54954.5. For purposes of describing closed session items pursuant to Section 54954.2, the agenda may describe closed sessions as provided below. No legislative body or elected official shall be in violation of Section 54954.2 or 54956 if the closed session items were described in substantial compliance with this section. Substantial compliance is

satisfied by including the information provided below, irrespective of its format.

(a) With respect to a closed session held pursuant to Section 54956.7:

LICENSE/PERMIT DETERMINATION

Applicant(s): (Specify number of applicants)

(b) With respect to every item of business to be discussed in closed session pursuant to Section 54956.8:

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Property: (Specify street address, or if no street address, the parcel number or other unique reference, of the real property under negotiation)

Agency negotiator: (Specify names of negotiators attending the closed session) (If circumstances necessitate the absence of a specified negotiator, an agent or designee may participate in place of the absent negotiator so long as the name of the agent or designee is announced at an open session held prior to the closed session.)

Negotiating parties: (Specify name of party (not agent))

Under negotiation: (Specify whether instruction to negotiator will concern price, terms of payment, or both)

(c) With respect to every item of business to be discussed in closed session pursuant to Section 54956.9:

CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION

(Subdivision (a) of Section 54956.9)

Name of case: (Specify by reference to claimant's name, names of parties, case or claim numbers)

or

Case name unspecified: (Specify whether disclosure would jeopardize service of process or existing settlement negotiations)

CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9: (Specify number of potential cases)

(In addition to the information noticed above, the agency may be required to provide additional information on the agenda or in an oral statement prior to the closed session pursuant to subparagraphs (B) to (E), inclusive, of paragraph (3) of subdivision (b) of Section 54956.9.)

Initiation of litigation pursuant to subdivision (c) of Section 54956.9: (Specify number of potential cases)

(d) With respect to every item of business to be discussed in closed session pursuant to Section 54956.95:

LIABILITY CLAIMS
Claimant: (Specify name unless unspecified pursuant to Section 54961)
Agency claimed against: (Specify name)

(e) With respect to every item of business to be discussed in closed session pursuant to Section 54957:

THREAT TO PUBLIC SERVICES OR FACILITIES
Consultation with: (Specify name of law enforcement agency and title of officer, or name of applicable agency representative and title)
PUBLIC EMPLOYEE APPOINTMENT
Title: (Specify description of position to be filled)
PUBLIC EMPLOYMENT
Title: (Specify description of position to be filled)
PUBLIC EMPLOYEE PERFORMANCE EVALUATION
Title: (Specify position title of employee being reviewed)
PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE
(No additional information is required in connection with a closed session to consider discipline, dismissal, or release of a public employee. Discipline includes potential reduction of compensation.)

(f) With respect to every item of business to be discussed in closed session pursuant to Section 54957.6:

CONFERENCE WITH LABOR NEGOTIATORS
Agency designated representatives: (Specify names of designated representatives attending the closed session) (If circumstances necessitate the absence of a specified designated representative, an agent or designee may participate in place of the absent representative so long as the name of the agent or designee is announced at an open session held prior to the closed session.)
Employee organization: (Specify name of organization representing employee or employees in question)
or
Unrepresented employee: (Specify position title of unrepresented employee who is the subject of the negotiations)

(g) With respect to closed sessions called pursuant to Section 54957.8:

CASE REVIEW/PLANNING

(No additional information is required in connection with a closed session to consider case review or planning.)

(h) With respect to every item of business to be discussed in closed session pursuant to Sections 1461, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code:

REPORT INVOLVING TRADE SECRET

Discussion will concern: (Specify whether discussion will concern proposed new service, program, or facility)

Estimated date of public disclosure: (Specify month and year)

HEARINGS

Subject matter: (Specify whether testimony/deliberation will concern staff privileges, report of medical audit committee, or report of quality assurance committee)

(i) With respect to every item of business to be discussed in closed session pursuant to Section 54956.86:

CHARGE OR COMPLAINT INVOLVING INFORMATION PROTECTED BY FEDERAL LAW

(No additional information is required in connection with a closed session to discuss a charge or complaint pursuant to Section 54956.86.)

(j) With respect to every item of business to be discussed in closed session pursuant to Section 54956.96:

CONFERENCE INVOLVING A JOINT POWERS AGENCY (Specify by name)

Discussion will concern: (Specify closed session description used by the joint powers agency.) Name of local agency representative on joint powers agency board: (Specify name)

(Additional information listing the names of agencies or titles of representatives attending the closed session as consultants or other representatives.)

SEC. 1.5. Section 54954.5 of the Government Code is amended to read:

54954.5. For purposes of describing closed session items pursuant to Section 54954.2, the agenda may describe closed sessions as provided below. No legislative body or elected official shall be in violation of Section 54954.2 or 54956 if the closed session items were described in

substantial compliance with this section. Substantial compliance is satisfied by including the information provided below, irrespective of its format.

(a) With respect to a closed session held pursuant to Section 54956.7:

LICENSE/PERMIT DETERMINATION

Applicant(s): (Specify number of applicants)

(b) With respect to every item of business to be discussed in closed session pursuant to Section 54956.8:

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Property: (Specify street address, or if no street address, the parcel number or other unique reference, of the real property under negotiation)

Agency negotiator: (Specify names of negotiators attending the closed session) (If circumstances necessitate the absence of a specified negotiator, an agent or designee may participate in place of the absent negotiator so long as the name of the agent or designee is announced at an open session held prior to the closed session.)

Negotiating parties: (Specify name of party (not agent))

Under negotiation: (Specify whether instruction to negotiator will concern price, terms of payment, or both)

(c) With respect to every item of business to be discussed in closed session pursuant to Section 54956.9:

CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION

(Subdivision (a) of Section 54956.9)

Name of case: (Specify by reference to claimant's name, names of parties, case or claim numbers)

or

Case name unspecified: (Specify whether disclosure would jeopardize service of process or existing settlement negotiations)

CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9: (Specify number of potential cases)

(In addition to the information noticed above, the agency may be required to provide additional information on the agenda or in an oral statement prior to the closed session pursuant to subparagraphs (B) to (E), inclusive, of paragraph (3) of subdivision (b) of Section 54956.9.)

Initiation of litigation pursuant to subdivision (c) of Section 54956.9: (Specify number of potential cases)

(d) With respect to every item of business to be discussed in closed session pursuant to Section 54956.95:

LIABILITY CLAIMS
Claimant: (Specify name unless unspecified pursuant to Section 54961)
Agency claimed against: (Specify name)

(e) With respect to every item of business to be discussed in closed session pursuant to Section 54957:

THREAT TO PUBLIC SERVICES OR FACILITIES
Consultation with: (Specify name of law enforcement agency and title of officer, or name of applicable agency representative and title)
PUBLIC EMPLOYEE APPOINTMENT
Title: (Specify description of position to be filled)
PUBLIC EMPLOYMENT
Title: (Specify description of position to be filled)
PUBLIC EMPLOYEE PERFORMANCE EVALUATION
Title: (Specify position title of employee being reviewed)
PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE
(No additional information is required in connection with a closed session to consider discipline, dismissal, or release of a public employee. Discipline includes potential reduction of compensation.)

(f) With respect to every item of business to be discussed in closed session pursuant to Section 54957.6:

CONFERENCE WITH LABOR NEGOTIATORS
Agency designated representatives: (Specify names of designated representatives attending the closed session) (If circumstances necessitate the absence of a specified designated representative, an agent or designee may participate in place of the absent representative so long as the name of the agent or designee is announced at an open session held prior to the closed session.)
Employee organization: (Specify name of organization representing employee or employees in question)
or
Unrepresented employee: (Specify position title of unrepresented employee who is the subject of the negotiations)

(g) With respect to closed sessions called pursuant to Section 54957.8:

CASE REVIEW/PLANNING

(No additional information is required in connection with a closed session to consider case review or planning.)

(h) With respect to every item of business to be discussed in closed session pursuant to Sections 1461, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code:

REPORT INVOLVING TRADE SECRET

Discussion will concern: (Specify whether discussion will concern proposed new service, program, or facility)

Estimated date of public disclosure: (Specify month and year)

HEARINGS

Subject matter: (Specify whether testimony/deliberation will concern staff privileges, report of medical audit committee, or report of quality assurance committee)

(i) With respect to every item of business to be discussed in closed session pursuant to Section 54956.86:

CHARGE OR COMPLAINT INVOLVING INFORMATION PROTECTED BY FEDERAL LAW

(No additional information is required in connection with a closed session to discuss a charge or complaint pursuant to Section 54956.86.)

(j) With respect to every item of business to be discussed in closed session pursuant to Section 54956.96:

CONFERENCE INVOLVING A JOINT POWERS AGENCY (Specify by name)

Discussion will concern: (Specify closed session description used by the joint powers agency.) Name of local agency representative on joint powers agency board: (Specify name)

(Additional information listing the names of agencies or titles of representatives attending the closed session as consultants or other representatives.)

(k) With respect to every item of business to be discussed in closed session pursuant to Section 54956.75:

AUDIT BY BUREAU OF STATE AUDITS

SEC. 2. Section 54956.96 is added to the Government Code, to read:

54956.96. (a) Nothing in this chapter shall be construed to prevent the legislative body of a joint powers agency formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1, from adopting a policy or a bylaw or including in its joint powers agreement provisions that authorize either or both of the following:

(1) All information received by the legislative body of the local agency member in a closed session related to the information presented to the joint powers agency in closed session shall be confidential. However, a member of the legislative body of a member local agency may disclose information obtained in a closed session that has direct financial or liability implications for that local agency to the following individuals:

(A) Legal counsel of that member local agency for purposes of obtaining advice on whether the matter has direct financial or liability implications for that member local agency.

(B) Other members of the legislative body of the local agency present in a closed session of that member local agency.

(2) Any designated alternate member of the legislative body of the joint powers agency who is also a member of the legislative body of a local agency member and who is attending a properly noticed meeting of the joint powers agency in lieu of a local agency member's regularly appointed member to attend closed sessions of the joint powers agency.

(b) If the legislative body of a joint powers agency adopts a policy or a bylaw or includes provisions in its joint powers agreement pursuant to subdivision (a), then the legislative body of the local agency member, upon the advice of its legal counsel, may conduct a closed session in order to receive, discuss, and take action concerning information obtained in a closed session of the joint powers agency pursuant to paragraph (1) of subdivision (a).

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 54954.5 of the Government Code proposed by both this bill and AB 1827. 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 54954.5 of the Government Code, and (3) this bill is enacted after AB 1827, in which case Section 1 of this bill shall not become operative.

CHAPTER 785

An act to amend Sections 1301, 9283, 9285, 10221, 10226, 10228, 10262, 10263, 10403.5, 12111, 13113, 17100, and 17304 of the Elections Code, and to amend Section 36801 of the Government Code, relating to elections.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 25, 2004.]

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

SECTION 1. Section 1301 of the Elections Code is amended to read:

1301. (a) Except as required by Section 57379 of the Government Code, and except as provided in subdivision (b), a general municipal election shall be held on an established election date pursuant to Section 1000.

(b) (1) Notwithstanding subdivision (a), a city council may enact an ordinance, pursuant to Division 10 (commencing with Section 10000), requiring its general municipal election to be held on the same day as the statewide direct primary election, the day of the statewide general election, on the day of school district elections as set forth in Section 1302, the first Tuesday after the first Monday of March in each odd-numbered year, or the second Tuesday of April in each year. Any ordinance adopted pursuant to this subdivision shall become operative upon approval by the board of supervisors.

(2) In the event of consolidation, the general municipal election shall be conducted in accordance with all applicable procedural requirements of this code pertaining to that primary, general, or school district election, and shall thereafter occur in consolidation with that election.

(c) If a city adopts an ordinance described in subdivision (b), the municipal election following the adoption of the ordinance and each municipal election thereafter shall be conducted on the date specified by the city council, in accordance with subdivision (b), unless the ordinance in question is later repealed by the city council.

(d) If the date of a general municipal election is changed pursuant to subdivision (b), at least one election shall be held before the ordinance, as approved by the board of supervisors, may be subsequently repealed or amended.

SEC. 2. Section 9283 of the Elections Code is amended to read:

9283. A ballot argument may not be accepted under this article unless accompanied by the printed name and signature or printed names and signatures of the author or authors submitting it, or, if submitted on behalf of an organization, the name of the organization and the printed

name and signature of at least one of its principal officers who is the author of the argument.

No more than five signatures shall appear with any argument submitted under this article. In case any argument is signed by more than five authors, the signatures of the first five shall be printed.

SEC. 3. Section 9285 of the Elections Code is amended to read:

9285. (a) (1) When an elections official receives an argument relating to a city measure that will be printed in the ballot pamphlet, the elections official shall send a copy of an argument in favor of the proposition to the authors of any argument against the measure and a copy of an argument against the measure to the authors of any argument in favor of the measure immediately upon receiving the arguments.

(2) The author or a majority of the authors of an argument relating to a city measure may prepare and submit a rebuttal argument not exceeding 250 words or may authorize in writing any other person or persons to prepare, submit, or sign the rebuttal argument.

(3) A rebuttal argument relating to a city measure shall be filed with the elections official no later than 10 days after the final filing date for primary arguments.

(4) A rebuttal argument relating to a city measure may not be signed by more than five persons and shall be printed in the same manner as a direct argument and shall immediately follow the direct argument which it seeks to rebut.

(b) Subdivision (a) applies only if, not later than the day on which the legislative body calls an election, the legislative body, adopts its provisions by majority vote, in which case subdivision (a) applies at the next ensuing municipal election and at each municipal election thereafter, unless later repealed by the legislative body in accordance with the procedures of this subdivision.

SEC. 4. Section 10221 of the Elections Code is amended to read:

10221. (a) Except as provided in subdivision (b), the signatures to each nomination paper shall be appended on the same sheet of paper, and each signer shall add his or her place of residence, giving the street and number, if any, or another designation of his or her place of residence, so as to enable its location to be readily ascertained.

(b) Once a nomination paper is filed with the elections official, the nomination paper may not be returned to the candidate to obtain additional signatures. If the nomination paper is determined to be insufficient or the candidate fails to obtain the correct number of valid signatures on his or her nomination paper, the elections official shall retain the original nomination paper, provide a copy of the nomination paper to the candidate with an indication on of which signatures are valid, and issue one supplemental petition to the candidate on which the candidate may collect additional signatures. The supplemental petition

shall be filed not later than the last day for filing for that office. The form of the supplemental petition shall be the same as the nomination paper, except that the word ''Supplemental'' shall be inserted above the phrase ''Nomination Paper.''

SEC. 5. Section 10226 of the Elections Code is amended to read:

10226. The nomination papers and affidavits shall be substantially in the following form:

''NOMINATION PAPER

We, the undersigned voters of the ____ of ____ hereby nominate ____ for the office of ____ of the city:

Name	Residence
_____	_____
_____	_____
_____	_____

AFFIDAVIT OF THE CIRCULATOR

State of California ⎫
County of _____ ⎭ ss.

I, _____, solemnly swear (or affirm) that the signatures on this nomination paper were obtained between _____, 2__, and _____, 2__; that I circulated this petition and I saw the signatures on this section of the nomination papers being written; and that, to the best of my information and belief, each signature is the genuine signature of the person whose name it purports to be.

My residence address is _____.

_____
(Signature)

I certify (or declare) under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed by me at ____, on ____, 2__.

AFFIDAVIT OF THE NOMINEE

State of California)
County of _____) ss.

_____ being duly sworn, says that he or she is the above–named nominee for the office of ____, that he or she will accept the office in the event of his or her election, that he or she desires his or her name to appear on the ballot as follows:

_____
(Print name above),

and that he or she desires the following designation to appear on the ballot under his or her name:

_____
(Print desired designation above.)

I certify (or declare) under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed by me at ____, on ____, 2___.''

SEC. 6. Section 10228 of the Elections Code is amended to read:

10228. A filing fee proportionate to the costs of processing a candidate's nomination papers or a candidate's supplemental nomination papers filed pursuant to subdivision (b) of Section 10221 as determined by the city council and set by ordinance, but not exceeding twenty-five dollars ($25), may be imposed, to be paid upon the filing of the nomination papers.

SEC. 7. Section 10262 of the Elections Code is amended to read:

10262. The canvass shall be conducted by the elections official. Sections 15302 and 15303 shall govern the conduct of the canvass. Upon the completion of the canvass, the elections official shall certify the results to the governing body.

(a) Except as provided in subdivision (b), the canvass shall be completed by the elections official no later than the fourth Friday after the election. Upon completion of the canvass, the elections official shall certify the results to the governing body which shall, no later than the fourth Friday after the election, comply with the applicable provisions of Section 10263.

(b) For a consolidated election, the city elections official, upon receipt of the results of the election from the elections official conducting the election, shall certify the results to the governing body which shall, no later than the next regularly scheduled city council meeting following presentation of the 28-day canvass of the returns, or at a special meeting

called for this purpose, comply with the applicable provisions of Section 10263.

SEC. 8. Section 10263 of the Elections Code is amended to read:

10263. Upon the completion of the canvass and before installing the new officers, the governing body shall adopt a resolution reciting the fact of the election and the other matters that are enumerated in Section 10264. The governing body shall declare elected the persons for whom the highest number of votes were cast for each office.

(a) Except as provided in subdivision (b), the governing body shall meet at its usual place of meeting no later than the fourth Friday after the election to declare the results and to install the newly elected officers.

(b) For a consolidated election, the governing body shall meet at its usual place of meeting no later than the next regularly scheduled city council meeting following presentation of the 28-day canvass of the returns, or at a special meeting called for this purpose, to declare the results and to install the newly elected officers.

SEC. 9. Section 10403.5 of the Elections Code is amended to read:

10403.5. (a) (1) Any city ordinance requiring its general municipal election to be held on a day specified in subdivision (b) of Section 1301 shall be approved by the board of supervisors unless the ballot style, voting equipment, or computer capability is such that additional elections or materials cannot be handled. Prior to adoption of a resolution to either approve or deny a consolidation request, the board or boards of supervisors shall each obtain from the elections official a report on the cost-effectiveness of the proposed action.

(2) A city, by itself or in concert with other cities, may purchase or otherwise contribute to the purchase of elections equipment, including, but not limited to, a computer for the purposes of conducting a consolidated election when the equipment shall be owned by the county.

(b) As a result of the adoption of an ordinance pursuant to this section, no term of office shall be increased or decreased by more than 12 months. As used in this subdivision, ''12 months'' means the period between the day upon which the term of office would otherwise have commenced and the first Tuesday after the second Monday in the 12th month before or after that day, inclusive.

(c) If an election is held on a day specified in subdivision (b) of Section 1301, and the election is consolidated with another election this part, except Section 10403, shall govern the consolidation and, if the county elections official is requested to conduct the municipal election, Section 10002 shall be applicable to that election.

(d) If a general municipal election is held on the same day as a statewide election, those city officers whose terms of office would have, prior to the adoption of the ordinance, expired no later than the next regularly scheduled city council meeting after receipt of the certification

of the results from the elections official shall, instead, continue in their offices until not later than that meeting.

(e) Within 30 days after the ordinance becomes operative, the city elections official shall cause a notice to be mailed to all registered voters informing the voters of the change in the election date. The notice shall also inform the voters that as a result in the change in the election date, the terms of office of the elected city officeholders will be changed.

SEC. 10. Section 12111 of the Elections Code is amended to read:

12111. (a) In case of a municipal election on any measure, the city elections official shall publish a synopsis of the measure at least one time not later than one week before the election in a newspaper of general circulation in the city. If there is no newspaper of general circulation published and circulated in the city, the notice shall be typewritten and copies shall be posted conspicuously within the time prescribed in at least three public places in the city.

The notice shall be headed ''Measure To Be Voted On'' in conspicuous type and shall be substantially in the following form:

MEASURE TO BE VOTED ON

Notice is hereby given that the following measure is to be voted on at the ____ (general or special) municipal election to be held in the City of ____, on Tuesday, the ____ day of ____, 2___.

(Synopsis of measure or measures)

Dated ____

_____

City Elections Official

City of _____

(b) The city elections official shall consolidate the notice of election and the notice of measure to be voted on into one notice if the measure was placed on the ballot before the notice of election is published pursuant to Section 12101.

SEC. 11. Section 13113 of the Elections Code is amended to read:

13113. (a) In the case of an election of candidates in a special district, school district, charter city (whose charter does not provide to the contrary), or other local government body, occurring on other than one of the election dates specified in subdivision (b) of Section 13112, the official responsible for conducting the election shall, at the same time that the election is called, notify the Secretary of State by registered mail of the date of the election, the date of the close of filing, and the last

possible date for filing in the event there is an extension of filing due to an incumbent failing to file. The Secretary of State shall conduct a randomized alphabet drawing on the first weekday following the last possible day of filing for the election according to subdivision (a) of Section 13112.

(b) Except as provided for runoff elections in subdivision (d), if two or more drawings for local government elections would occur on the same date, the Secretary of State may use a single randomized alphabet drawing for all of these elections. The Secretary of State shall communicate the results of the drawing by registered mail to each respective official responsible for conducting the election who shall use it to determine the order on the ballot of all candidates' names.

(c) All drawings held pursuant to this section shall be open to the public.

(d) If a charter city conducts a runoff election it shall use the results of a randomized alphabet drawing separate from the results of the randomized alphabet drawing used for the initial election for that runoff election. The city shall, within three days following the initial election, notify the Secretary of State by registered mail of the date of the election and request that he or she conduct a randomized alphabet drawing for the runoff election. The Secretary of State shall immediately conduct a randomized alphabet drawing for the runoff election and communicate the results of the drawing to the elections official responsible for conducting the runoff election who shall use the results to determine the order of all the candidates' names on the ballot. The results of the randomized alphabet drawing shall be clearly labeled ''FOR USE IN A RUNOFF ELECTION ONLY.''

SEC. 12. Section 17100 of the Elections Code is amended to read:

17100. (a) All nomination documents and signatures in lieu of filing fee petitions filed in accordance with this code shall be held by the officer with whom they are filed during the term of office for which they are filed and for four years after the expiration of the term.

(b) Thereafter, the documents and petitions shall be destroyed as soon as practicable unless they either are in evidence in some action or proceeding then pending or unless the elections official has received a written request from the Attorney General, the Secretary of State, the Fair Political Practices Commission, a district attorney, a grand jury, or the governing body of a county, city and county, or district, including a school district, that the documents and petitions be preserved for use in a pending or ongoing investigation into election irregularities, the subject of which relates to the placement of a candidate's name on the ballot, or in a pending or ongoing investigation into a violation of the Political Reform Act of 1974 (Title 9 (commencing with Section 81000) of the Government Code).

(c) Public access to the documents described in subdivision (a) shall be limited to viewing the documents only. The public may not copy or distribute copies of the documents described in subdivision (a) that contain signatures of voters.

SEC. 13. Section 17304 of the Elections Code is amended to read:

17304. (a) The following provisions shall apply to all state or local elections not provided for in subdivision (a) of Section 17303. An election is not deemed a state or local election if votes for candidates for federal office may be cast on the same ballot as votes for candidates for state or local office.

(b) The elections official shall preserve the package or packages containing the following items for a period of six months:

(1) Two tally sheets.

(2) The copy of the index used as the voting record.

(3) The challenge lists.

(4) The assisted voters list.

(c) All voters may inspect the contents of the package or packages at all times following commencement of the official canvass of the votes, except that items that contain signatures of voters may not be copied or distributed.

(d) If a contest is not commenced within the six-month period, or if a criminal prosecution involving fraudulent use, marking or falsification of ballots, or forgery of absent voters' signatures is not commenced within the six-month period, either of which may involve the vote of the precinct from which voted ballots were received, the election official may have the packages destroyed or recycled.

SEC. 14. Section 36801 of the Government Code is amended to read:

36801. The city council shall meet at the meeting at which the declaration of the election results is made pursuant to Sections 10262 and 10263 of the Elections Code and, following the declaration of the election results and the installation of elected officials, choose one of its number as mayor, and one of its number as mayor pro tempore.

SEC. 15. It is the intent of the Legislature that any modification to state law governing municipal election procedures required by this bill shall not result in additional costs to local election officials or result in the Commission on State Mandates making a finding or determination that these modifications establish a reimbursable state mandate.

SEC. 16. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one

million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 786

An act to add Section 402.95 to the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 25, 2004.]

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

SECTION 1. Section 402.95 is added to the Revenue and Taxation Code, to read:

402.95. In valuing property under the income method of appraisal, the assessor shall exclude from income the benefit from federal and state low-income housing tax credits allocated by the California Tax Credit Allocation Committee pursuant to Section 42 of the Internal Revenue Code and Sections 12206, 17058, and 23610.5.

CHAPTER 787

An act to amend Section 1861.16 of the Insurance Code, relating to automobile insurance.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 25, 2004.]

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

SECTION 1. Section 1861.16 of the Insurance Code is amended to read:

1861.16. (a) An insurer issuing a policy described in subdivision (a) of Section 660 by or through an insurance agent where a commission is paid, directly or indirectly, to that agent shall, when issuing a policy in the minimum financial responsibility coverage amount as required by Section 1861.15, pay a commission on the same terms and on the same percentage basis to that agent as for any higher amount of policy coverage sold by that agent. In no case shall the percentage amount of commission paid to that agent for a policy of minimum financial

responsibility coverage be less than the percentage commission paid to that agent on any higher level of policy coverage issued by that insurer.

(b) An agent or representative representing one or more insurers having common ownership or operating in California under common management or control shall offer, and the insurer shall sell, a good driver discount policy to a good driver from an insurer within that common ownership, management, or control group, which offers the lowest rates for that coverage. This requirement applies notwithstanding the underwriting guidelines of any of those insurers or the underwriting guidelines of the common ownership, management, or control group. Nothing in this subdivision shall require an insurer to offer and sell a good driver discount policy that the insurer would otherwise not be required to offer and sell in accordance with paragraph (3) of subdivision (b) of Section 1861.02. As used in this subdivision, ''representative'' means any person who offers or prepares premium quotations on behalf of either an insurer or any entity acting directly or indirectly on behalf of an insurer. This subdivision shall not be construed to either permit a representative to transact insurance, or to exempt a representative who does transact insurance from the licensing provisions of this code.

(c) (1) Notwithstanding subdivision (b), insurers having common ownership and operating in California under common control are not required to sell good driver discount policies issued by other insurers within the common ownership group if the commissioner determines that the insurers satisfy each of the following conditions:

(A) The business operations of the insurers are independently managed and directed.

(B) The insurers do not jointly develop loss or expense statistics or other data used in ratemaking, or in the preparation of rating systems or rate filings.

(C) The insurers do not jointly maintain or share loss or expense statistics, or other data used in ratemaking or in the preparation of rating systems or rate filings. This condition shall not apply if the data is generally available to the industry through a nonaffiliated third party and is obtained from that third party.

(D) The insurers do not utilize each others' marketing, sales, or underwriting data.

(E) The insurers act independently of each other in determining, filing, and applying base rates, factors, class plans, and underwriting rules, and in the making of insurance policy forms.

(F) The insurers' sales operations are separate.

(G) The insurers' marketing operations are separate.

(H) The insurers' policy service operations are separate.

(2) Notwithstanding Senate Bill 1 of the 2003–04 Regular Session (Chapter 241 of the Statutes of 2003), the federal Gramm-Leach-Bliley

Act (Public Law 106-102), and the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681 and following), the sharing of information between insurers as described in subparagraphs (A) to (H), inclusive, of paragraph (1) shall be more restrictive than may otherwise be permissible pursuant to those acts.

(d) Except to the extent restricted by subdivision (c) or any regulation adopted to implement subdivision (c), this section shall not be interpreted to restrict the right of an insurer or holding company to use aggregate data of its affiliated insurers having common ownership or operating in California under common control.

(e) Nothing in subdivision (c) is intended to amend, alter, or supersede other sections of this code, or other laws of this state, regarding any right of an insurer or holding company to use aggregate data of its affiliated insurers having common ownership or operating in California under common control.

(f) The commissioner may adopt regulations to implement this section.

(g) An insurer that is required by this section or Section 1861.02 to offer and sell good driver discount policies to good drivers to whom it did not sell those policies prior to November 8, 1988, due to driving safety record or vehicle type may file and, upon the approval of the commissioner, implement an interim rating plan for those applicants until the rating plan required by subdivision (a) of Section 1861.02 is adopted, provided that the insurer has timely filed an automobile insurance rating plan in compliance with subdivision (a) of Section 1861.02, and that plan has not been approved. An insurer may file an interim plan prior to the operative date of subdivision (b).

The commissioner shall notify the public of any application by an insurer for an interim rating plan. The public notice shall meet the requirements of Section 1861.06. The application shall be deemed approved 60 days after public notice unless (1) a consumer or his or her representative requests a hearing within 45 days of public notice and the commissioner grants the hearing, or determines not to grant the hearing and issues written findings in support of that decision, or (2) the commissioner on his or her own motion determines to hold a hearing. If the commissioner grants a request for a hearing or determines on his or her own motion to hold a hearing on the application for an interim rating plan, but does not approve or disapprove the proposed interim rating plan within the later of 30 days from the date the commissioner grants a request or determines to hold the hearing or January 1, 1991, the interim rating plan may be used until the time that the commissioner issues a decision.

If an interim rate or proposed interim rate is greater than the rate ultimately approved, the insurer shall refund to its applicable

policyholders, in proportion to the amount of premium paid by each, the difference between the total amount earned and the amount to which the insurer is entitled under the rate ultimately approved, together with interest at the rate of 10 percent per year. In lieu of a refund, the insurer may provide a credit to the policyholder if the amount due is less than three dollars ($3).

(h) Nothing contained in subdivision (b) or (c) shall be construed to expand, limit, or modify the requirements of subdivision (b) of Section 1861.02.

(i) A violation of this section by any insurer shall subject it to the penalties provided by Section 1861.14.

CHAPTER 788

An act to amend Sections 44100, 44101, 44858, 45293, 69958, 87100, and 88112 of the Education Code, to amend Sections 19572, 19572.1, 19702, 19704, and 19793 of the Government Code, to amend Sections 1156.3, 1735, 1777.6, and 3095 of the Labor Code, to amend Section 130 of the Military and Veterans Code, to amend Sections 25051, 28850, 30750, 50120, 70121, 90300, 95650, 98161, 100303, 101343, 102402, 103403, 120504, and 125523 of the Public Utilities Code, to amend Section 1256.2 of the Unemployment Insurance Code, and to amend Sections 11320.31, 11322.62, and 14087.28 of the Welfare and Institutions Code, relating to employment discrimination.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 25, 2004.]

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

SECTION 1. Section 44100 of the Education Code is amended to read:

44100. (a) The Legislature finds and declares the following:

(1) Generally, California school districts employ a disproportionately low number of racial and ethnic minority classified and certificated employees and a disproportionately low number of women and members of racial and ethnic minorities in administrative positions.

(2) It is educationally sound for the minority student attending a racially impacted school to have available to him or her the positive image provided by minority classified and certificated employees. It is likewise educationally sound for the child from the majority group to have positive experiences with minority people, that can be provided, in part, by having minority classified and certificated employees at schools

where the enrollment is largely made up of majority group students. It is also educationally important for students to observe that women as well as men can assume responsible and diverse roles in society.

(3) Past employment practices created artificial barriers and past efforts to promote additional action in the recruitment, employment, and promotion of women and minorities did not result in a substantial increase in employment opportunities for these persons.

(4) Lessons concerning democratic principles and the richness that racial diversity brings to our national heritage can be best taught by staffs composed of mixed races and ethnic groups working toward a common goal.

(b) It is the intent of the Legislature to do all of the following:

(1) Establish and maintain a policy of equal opportunity in employment for all persons.

(2) Prohibit discrimination on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code, in every aspect of personnel policy and practice in the employment, development, advancement, and treatment of persons employed in the public school system.

(3) Promote the total realization of equal employment opportunity through a continuing affirmative action employment program.

(c) The Legislature recognizes that it is not enough to proclaim that public employers do not discriminate in employment, but that effort must also be made to build a community in which opportunity is equalized. It is the intent of the Legislature to require educational agencies to adopt and implement plans for increasing the numbers of women and minority persons at all levels of responsibility.

SEC. 2. Section 44101 of the Education Code is amended to read:

44101. For the purposes of this article the following definitions apply:

(a) (1) ''Affirmative action employment program'' means planned activities designed to seek, hire, and promote persons who are underrepresented in the work force compared to their numbers in the population, including individuals with disabilities, women, and persons of minority racial and ethnic backgrounds. It is a conscious, deliberate step taken by a hiring authority to assure equal employment opportunity for all staff, both certificated and classified. These programs require the employer to make additional efforts to recruit, employ, and promote members of groups formerly excluded at the various levels of responsibility who are qualified or may become qualified through appropriate training or experience within a reasonable length of time.

These programs should be designed to remedy the exclusion, whatever its cause.

(2) Affirmative action requires imaginative, energetic, and sustained action by each employer to devise recruiting, training, and career advancement opportunities that will result in an equitable representation of women and minorities in relation to all employees of the employer.

(b) ''Goals and timetables'' means projected new levels of employment of women and minority racial and ethnic groups to be attained on an annual schedule, given the expected turnover in the work force and the availability of persons who are qualified or may become qualified through appropriate training or experience within a reasonable length of time. Goals are not quotas or rigid proportions. They should relate both to the qualitative and quantitative needs of the employer.

(c) ''Public education agency'' means the Department of Education, each office of the county superintendent of schools, and the governing board of each school district in California.

SEC. 3. Section 44858 of the Education Code is amended to read:

44858. The Legislature hereby declares that it is contrary to the interest of this state and of the people of the state for any governing board or any person charged by the governing board of any school district with the responsibility of interviewing and recommending persons for employment in positions requiring certification, to fail or refuse to interview or recommend a person applying for employment in a position requiring certification on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in this code and in Section 12940 of the Government Code.

SEC. 4. Section 45293 of the Education Code is amended to read:

45293. No questions relating to political or religious opinions or affiliations, or relating to any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, shall be asked of any applicant, or any candidate whose name has been certified for appointment, nor shall any discrimination be exercised therefor, except as otherwise provided in Section 12940 of the Government Code.

SEC. 5. Section 69958 of the Education Code is amended to read:

69958. (a) Potential work-study positions may be located by the institution or by eligible students in cooperation with the institution. Each position located shall be critically reviewed by the appropriate student financial aid and experiential education personnel to determine whether it satisfies all the conditions specified in Section 69960. To assist the institution in assessing the position, the employer shall submit a written statement to the institution that provides all of the following information:

(1) The total number of positions available.

(2) A job description of each available position, including the suggested rate of pay.

(3) The skills required of the prospective work-study employee.

(4) The educational benefits provided by the position.

(b) Once the institution has approved the work-study position, the employer and the institution, acting as the authorized agent of the Student Aid Commission, shall execute a written agreement that confirms the employer's eligibility to participate in the program and its willingness to comply with all program requirements, and specifies the responsibilities of each of the parties. The agreement shall be subject to annual renewal by mutual agreement of the institution and the employer.

(c) Following execution of the agreement pursuant to subdivision (b), the employer may interview prospective work-study employees. The institution shall provide the employer and each applicant for the work-study position with adequate information to facilitate a proper placement. Provided that the priorities specified in Section 69959 have been met, the employer may indicate his or her hiring preferences. An employer shall not discriminate between applicants on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code, or subject any applicant to any other discriminatory practices prohibited by state or federal law.

SEC. 6. Section 87100 of the Education Code is amended to read:

87100. (a) The Legislature finds and declares all of the following:

(1) In fulfilling its mission within California's system of public higher education, the California Community Colleges are committed to academic excellence and to providing all students with the opportunity to succeed in their chosen educational pursuits.

(2) Academic excellence can best be sustained in a climate of acceptance and with the inclusion of persons from a wide variety of backgrounds and preparations to provide service to an increasingly diverse student population.

(3) A work force that is continually responsive to the needs of a diverse student population may be achieved by ensuring that all persons receive an equal opportunity to compete for employment and promotion within the community college districts and by eliminating barriers to equal employment opportunity.

(b) It is the intent of the Legislature to establish and maintain within the California Community College districts a policy of equal opportunity in employment for all persons, and to prohibit discrimination or preferential treatment based on ethnic group identification, or on any basis listed in subdivision (a) of Section 12940

of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code. Every aspect of personnel policy and practice in the community college districts should advance the realization of inclusion through a continuing program of equal employment opportunity.

(c) The Legislature recognizes that it is not enough to proclaim that community college districts must not discriminate and must not grant preferential treatment on impermissible bases. The Legislature declares that efforts must also be made to build a community in which nondiscrimination and equal opportunity are realized. It is the intent of the Legislature to require community college districts to adopt and implement programs and plans for ensuring equal employment opportunity in their employment practices.

SEC. 7. Section 88112 of the Education Code is amended to read:

88112. No questions relating to political or religious opinions or affiliations, or any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, shall be asked of any applicant, or any candidate whose name has been certified for appointment, nor shall any discrimination be exercised therefor, except as otherwise provided in Section 12940 of the Government Code.

SEC. 8. Section 19572 of the Government Code is amended to read:

19572. Each of the following constitutes cause for discipline of an employee, or of a person whose name appears on any employment list:

(a) Fraud in securing appointment.

(b) Incompetency.

(c) Inefficiency.

(d) Inexcusable neglect of duty.

(e) Insubordination.

(f) Dishonesty.

(g) Drunkenness on duty.

(h) Intemperance.

(i) Addiction to the use of controlled substances.

(j) Inexcusable absence without leave.

(k) Conviction of a felony or conviction of a misdemeanor involving moral turpitude. A plea or verdict of guilty, or a conviction following a plea of nolo contendere, to a charge of a felony or any offense involving moral turpitude is deemed to be a conviction within the meaning of this section.

(*l*) Immorality.

(m) Discourteous treatment of the public or other employees.

(n) Improper political activity.

(o) Willful disobedience.

(p) Misuse of state property.

(q) Violation of this part or of a board rule.

(r) Violation of the prohibitions set forth in accordance with Section 19990.

(s) Refusal to take and subscribe any oath or affirmation that is required by law in connection with the employment.

(t) Other failure of good behavior either during or outside of duty hours, which is of such a nature that it causes discredit to the appointing authority or the person's employment.

(u) Any negligence, recklessness, or intentional act that results in the death of a patient of a state hospital serving the mentally disabled or the developmentally disabled.

(v) The use during duty hours, for training or target practice, of any material that is not authorized for that use by the appointing power.

(w) Unlawful discrimination, including harassment, on any basis listed in subdivision (a) of Section 12940, as those bases are defined in Sections 12926 and 12926.1, except as otherwise provided in Section 12940, against the public or other employees while acting in the capacity of a state employee.

(x) Unlawful retaliation against any other state officer or employee or member of the public who in good faith reports, discloses, divulges, or otherwise brings to the attention of, the Attorney General or any other appropriate authority, any facts or information relative to actual or suspected violation of any law of this state or the United States occurring on the job or directly related to the job.

SEC. 9. Section 19572.1 of the Government Code is amended to read:

19572.1. (a) Notwithstanding Section 19572, this section shall apply to state employees in State Bargaining Unit 8.

(b) Disciplinary actions pursuant to Section 19576.5 shall be for just cause or one or more of the following causes for discipline:

(1) Fraud in securing appointment.

(2) Incompetency.

(3) Inefficiency.

(4) Inexcusable neglect of duty.

(5) Insubordination.

(6) Dishonesty.

(7) Drunkenness on duty.

(8) Intemperance.

(9) Addiction to the use of controlled substances.

(10) Inexcusable absence without leave.

(11) Conviction of a felony or conviction of a misdemeanor involving moral turpitude. A plea or verdict of guilty, or a conviction following a plea of nolo contendere, to a charge of a felony of any offense involving

moral turpitude is deemed to be a conviction within the meaning of this section.

(12) Immorality.

(13) Discourteous treatment of the public or other employees.

(14) Improper political activity.

(15) Willful disobedience.

(16) Misuse of state property.

(17) Violation of this part or of a board rule.

(18) Violation of the prohibitions set forth in accordance with Section 19990.

(19) Refusal to take and subscribe any oath or affirmation that is required by law in connection with the employment.

(20) Other failure of good behavior either during or outside of duty hours that is of such a nature that it causes discredit to the appointing authority of the person's employment.

(21) Any negligence, recklessness, or intentional act that results in the death of a patient of a state hospital serving the mentally disabled or the developmentally disabled.

(22) The use during duty hours, for training or target practice, of any material that is not authorized for that use by the appointing power.

(23) Unlawful discrimination, including harassment, on any basis listed in subdivision (a) of Section 12940, as those bases are defined in Sections 12926 and 12926.1, except as otherwise provided in Section 12940, against the public or other employees while acting in the capacity of a state employee.

(24) Unlawful retaliation against any other state officer or employee or member of the public who in good faith reports, discloses, divulges, or otherwise brings to the attention of, the Attorney General or any other appropriate authority, any facts or information relative to actual or suspected violation of any law of this state or the United States occurring on the job or directly related to the job.

(c) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if any provision of that memorandum of understanding requires the expenditure of funds, that provision shall become effective only if approved by the Legislature in the annual Budget Act.

SEC. 10. Section 19702 of the Government Code is amended to read:

19702. (a) A person shall not be discriminated against under this part on any basis listed in subdivision (a) of Section 12940, as those bases are defined in Sections 12926 and 12926.1, except as otherwise provided in Section 12940. A person shall not be retaliated against

because he or she has opposed any practice made an unlawful employment practice, or made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. This subdivision is declaratory of existing law.

(b) For purposes of this article, ''discrimination'' includes harassment.

(c) If the board finds that a person has engaged in discrimination under this part, and it appears that this practice consisted of acts described in Section 243.4, 261, 262, 286, 288, 288a, or 289 of the Penal Code, the board, with the consent of the complainant, shall provide the local district attorney's office with a copy of the board's decision and order.

(d) (1) Except as otherwise provided in paragraph (2), if the board finds that discrimination has occurred in violation of this part, the board shall issue and cause to be served on the appointing authority an order requiring the appointing authority to cause the discrimination to cease and desist and to take any action, including, but not limited to, hiring, reinstatement, or upgrading of employees, with or without backpay, and compensatory damages, which, in the judgment of the board, will effectuate the purposes of this part. Consistent with this authority, the board may establish rules governing the award of compensatory damages. The order shall include a requirement of reporting the manner of compliance.

(2) Notwithstanding paragraph (1), this paragraph applies to state employees in State Bargaining Unit 6 or 8. If the board finds that discrimination has occurred in violation of this part, the board shall issue and cause to be served on the appointing authority an order requiring the appointing authority to cause the discrimination to cease and desist and to take any action, including, but not limited to, hiring, reinstatement, or upgrading of employees, with or without backpay, adding additional seniority, and compensatory damages, which, in the judgment of the board, will effectuate the purposes of this part. Consistent with this authority, the board may establish rules governing the award of compensatory damages. The order shall include a requirement of reporting the manner of compliance.

(e) Any person claiming discrimination within the state civil service may submit a written complaint that states the particulars of the alleged discrimination, the name of the appointing authority, the persons alleged to have committed the unlawful discrimination, and any other information that the board may require. The complaint shall be filed with the appointing authority or, in accordance with board rules, with the board itself.

(f) (1) Complaints shall be filed within one year of the alleged unlawful discrimination or the refusal to act in accordance with this

section, except that this period may be extended for not greater than 90 days following the expiration of that year, if a person allegedly aggrieved by unlawful discrimination first obtained knowledge of the facts of the alleged unlawful discrimination after the expiration of one year from the date of its occurrence. Complaints of discrimination in adverse actions or rejections on probation shall be filed in accordance with Sections 19175 and 19575.

(2) Notwithstanding paragraph (1), this paragraph shall apply only to state employees in State Bargaining Unit 8. Complaints shall be filed within one year of the alleged unlawful discrimination or the refusal to act in accordance with this section, except that this period may be extended for not greater than 90 days following the expiration of that year, if a person allegedly aggrieved by unlawful discrimination first obtained knowledge of the facts of the alleged unlawful discrimination after the expiration of one year from the date of its occurrence. Complaints of discrimination in disciplinary actions defined in Section 19576.5 shall be filed in accordance with that section. Complaints of discrimination in all other disciplinary actions shall be filed in accordance with Section 19575. Complaints of discrimination in rejections on probation shall be filed in accordance with Section 19175.3.

(g) If an employee of the appointing authority refuses, or threatens to refuse, to cooperate in the investigation of a complaint of discrimination, the appointing authority may seek assistance from the board. The board may provide for direct investigation or hearing of the complaint, the use of subpoenas, or any other action that will effectuate the purposes of this section.

(h) If a person demonstrates by a preponderance of evidence that the person's opposition to any practice made an unlawful employment practice under this part, or the person's charging, testifying, assisting, or participation in any manner in an investigation, proceeding, or hearing under this part, was a contributing factor in any adverse employment action taken against him or her, the burden of proof shall be on the supervisor, manager, employee, or appointing power to demonstrate by clear and convincing evidence that the alleged adverse employment action would have occurred for legitimate, independent reasons even if the person had not engaged in activities protected under this part. If the supervisor, manager, employee, or appointing power fails to meet this burden of proof in any administrative review, challenge, or adjudication in which retaliation has been demonstrated to be a contributing factor, the person shall have a complete affirmative defense to the adverse employment action.

(i) As used in this part, ''adverse employment action'' includes promising to confer, or conferring, any benefit, effecting, or threatening

to effect, any reprisal, or taking, or directing others to take, or recommending, processing, or approving, any personnel action, including, but not limited to, appointment, promotion, transfer, assignment, performance evaluation, suspension, or other disciplinary action.

SEC. 11. Section 19704 of the Government Code is amended to read:

19704. (a) It is unlawful to require, permit, or suffer any notation or entry to be made upon or in any application, examination paper, or other paper, book, document, or record used under this part indicating or in any way suggesting or pertaining to any basis listed in subdivision (a) of Section 12940, as those bases are defined in Sections 12926 and 12926.1.

(b) Notwithstanding subdivision (a), subsequent to employment, ethnic, marital status, and gender data may be obtained and maintained for research and statistical purposes when safeguards preventing misuse of the information exist as approved by the Fair Employment and Housing Commission, except that in no event shall any notation, entry, or record of that data be made on papers or records relating to the examination, appointment, or promotion of an individual.

SEC. 12. Section 19793 of the Government Code is amended to read:

19793. By November 15 of each year, beginning in 1978, the State Personnel Board shall report to the Governor, the Legislature, and the Department of Finance on a census of the state workforce and any underutilization problems in a state agency or department that may indicate failure to provide equal employment opportunity to minorities, women, and persons with disabilities during the past fiscal year. The report also shall include information on laws that discriminate or have the effect of discrimination on the basis of political affiliation or any basis listed in subdivision (a) of Section 12940, as those bases are defined in Sections 12926 and 12926.1. The Legislature shall evaluate the equal employment opportunity efforts of state agencies during its evaluation of the Budget Bill.

SEC. 13. Section 1156.3 of the Labor Code is amended to read:

1156.3. (a) A petition that is either signed by, or accompanied by authorization cards signed by, a majority of the currently employed employees in the bargaining unit, may be filed by an agricultural employee or group of agricultural employees, or any individual or labor organization acting on behalf of those agricultural employees, in accordance with any rules and regulations prescribed by the board. The petition shall allege all of the following:

(1) That the number of agricultural employees currently employed by the employer named in the petition, as determined from the employer's

payroll immediately preceding the filing of the petition, is not less than 50 percent of the employer's peak agricultural employment for the current calendar year.

(2) That no valid election pursuant to this section has been conducted among the agricultural employees of the employer named in the petition within the 12 months immediately preceding the filing of the petition.

(3) That no labor organization is currently certified as the exclusive collective-bargaining representative of the agricultural employees of the employer named in the petition.

(4) That the petition is not barred by an existing collective-bargaining agreement.

(b) Upon receipt of a signed petition, as described in subdivision (a), the board shall immediately investigate the petition. If the board has reasonable cause to believe that a bona fide question of representation exists, it shall direct a representation election by secret ballot to be held, upon due notice to all interested parties and within a maximum of seven days of the filing of the petition. If, at the time the election petition is filed, a majority of the employees in a bargaining unit are engaged in a strike, the board shall, with all due diligence, attempt to hold a secret ballot election within 48 hours of the filing of the petition. The holding of elections under strike circumstances shall take precedence over the holding of other secret ballot elections.

(c) The board shall make available at any election held under this chapter ballots printed in English and Spanish. The board may also make available at the election ballots printed in any other language as may be requested by an agricultural labor organization or any agricultural employee eligible to vote under this part. Every election ballot, except ballots in runoff elections where the choice is between labor organizations, shall provide the employee with the opportunity to vote against representation by a labor organization by providing an appropriate space designated ''No Labor Organizations.''

(d) Any other labor organization shall be qualified to appear on the ballot if it presents authorization cards signed by at least 20 percent of the employees in the bargaining unit at least 24 hours prior to the election.

(e) (1) Within five days after an election, any person may file with the board a signed petition asserting that allegations made in the petition filed pursuant to subdivision (a) were incorrect, asserting that the board improperly determined the geographical scope of the bargaining unit, or objecting to the conduct of the election or conduct affecting the results of the election.

(2) Upon receipt of a petition under this subdivision, the board, upon due notice, shall conduct a hearing to determine whether the election shall be certified. This hearing may be conducted by an officer or

employee of a regional office of the board. The officer may not make any recommendations with respect to the certification of the election. The board may refuse to certify the election if it finds, on the record of the hearing, that any of the assertions made in the petition filed pursuant to this subdivision are correct, that the election was not conducted properly, or that misconduct affecting the results of the election occurred. The board shall certify the election unless it determines that there are sufficient grounds to refuse to do so.

(f) If no petition is filed pursuant to subdivision (e) within five days of the election, the board shall certify the election.

(g) The board shall decertify a labor organization if either of the following occur:

(1) The Department of Fair Employment and Housing finds that the labor organization engaged in discrimination on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code.

(2) The United States Equal Employment Opportunity Commission finds, pursuant to Section 2000e-5 of Title 42 of the United States Code, that the labor organization engaged in discrimination on the basis of race, color, national origin, religion, sex, or any other arbitrary or invidious classification in violation of Subchapter VI of Chapter 21 of Title 42 of the United States Code during the period of the labor organization's present certification.

SEC. 14. Section 1735 of the Labor Code is amended to read:

1735. A contractor shall not discriminate in the employment of persons upon public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code. Every contractor for public works who violates this section is subject to all the penalties imposed for a violation of this chapter.

SEC. 15. Section 1777.6 of the Labor Code is amended to read:

1777.6. An employer or a labor union shall not refuse to accept otherwise qualified employees as registered apprentices on any public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as provided in Section 3077 of this code and Section 12940 of the Government Code.

SEC. 16. Section 3095 of the Labor Code is amended to read:

3095. Every person who willfully discriminates in any recruitment or apprenticeship program on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as

otherwise provided in Section 12940 of the Government Code, is guilty of a misdemeanor punishable by a fine of not more than one thousand dollars ($1,000) or by imprisonment for not more than six months, or both.

SEC. 17. Section 130 of the Military and Veterans Code is amended to read:

130. (a) Members of the militia of the state shall not be discriminated against in enlistments, promotions, or commissions on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code.

(b) It is hereby declared to be the policy of the State of California that there be equality of treatment and opportunity for all members of the militia of the state without regard to any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code. This policy shall be put into effect in the militia by rules and regulations to be issued by the Governor with due regard to the powers of the federal government that are, or may be, exercised over all the militia of the state with regard to positions requiring federal recognition.

SEC. 18. Section 25051 of the Public Utilities Code is amended to read:

25051. (a) If a majority of the employees employed by a transit district in a unit appropriate for collective bargaining indicate a desire to be represented by a labor organization, the transit board, after determining pursuant to Section 25052 that the labor organization represents the employees in the appropriate unit, shall bargain with the accredited representative of those employees. Both parties shall bargain in good faith and make all reasonable efforts to reach agreement on the terms of a written contract governing wages, salaries, hours, working conditions, and grievance procedures.

(1) If a dispute arises over the terms of a written contract governing wages, salaries, hours, or working conditions that is not resolved by negotiations conducted in good faith between the transit board and the representatives of the employees, then upon the agreement of both parties, the transit board and the representatives of the employees may submit the dispute to an arbitration board. The decision of a majority of the arbitration board shall be final.

(2) (A) The arbitration board shall be composed of two representatives of the transit board, two representatives of the labor organization, and a fifth member to be agreed upon by the representatives of the transit board and labor organization.

(B) If the representatives of the transit board and labor organization are unable to agree on the fifth member, then the names of five persons experienced in labor arbitration shall be obtained from the California State Mediation and Conciliation Service within the Department of Industrial Relations. The labor organization and the transit district shall, alternately, strike a name from the list supplied by the California State Mediation and Conciliation Service. The labor organization and the transit district shall determine by lot who shall first strike a name from the list. After the labor organization and the transit district have stricken four names, the name remaining shall be designated as the arbitrator.

(C) The transit board and the labor organization shall each pay half of the cost of the impartial arbitrator.

(b) A contract or agreement shall not be made with any labor organization, association, group, or individual that denies membership on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code. However, the organization may preclude from membership any individual who advocates the overthrow of the government by force or violence.

(c) The district shall not discriminate with regard to employment against any person on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code.

SEC. 19. Section 28850 of the Public Utilities Code is amended to read:

28850. (a) If a majority of the employees employed by a district in a unit appropriate for collective bargaining indicate a desire to be represented by a labor organization, then the board, after determining pursuant to Section 28851 that the labor organization represents the employees in the appropriate unit, shall bargain with the accredited representative of those employees. Both parties shall bargain in good faith and make all reasonable efforts to reach agreement on the terms of a written contract governing wages, salaries, hours, working conditions, and grievance procedures.

(1) If a dispute arises over the terms of a written contract governing wages, salaries, hours, or working conditions that is not resolved by negotiations conducted in good faith between the board and the representatives of the employees, then upon the agreement of both parties, the board and the representatives of the employees may submit the dispute to an arbitration board. The decision of a majority of the arbitration board shall be final.

(2) (A) The arbitration board shall be composed of two representatives of the district, two representatives of the labor

organization, and a fifth member to be agreed upon by the representatives of the district and the labor organization.

(B) If the representatives of the district and the labor organization are unable to agree on the fifth member, then the names of five persons experienced in labor arbitration shall be obtained from the California State Mediation and Conciliation Service within the Department of Industrial Relations. The labor organization and the district shall, alternately, strike a name from the list supplied by the California State Mediation and Conciliation Service. The labor organization and the district shall determine by lot who shall first strike a name from the list. After the labor organization and the district have stricken four names, the name remaining shall be designated as the arbitrator.

(C) The transit board and the labor organization shall each pay half of the cost of the impartial arbitrator.

(b) A contract or agreement shall not be made with any labor organization, association, group, or individual that denies membership on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code. However, the organization may preclude from membership any individual who advocates the overthrow of the government by force or violence.

(c) The district shall not discriminate with regard to employment against any person on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code.

SEC. 20. Section 30750 of the Public Utilities Code is amended to read:

30750. (a) Subject to subdivision (b), if a majority of the employees employed by a district in a unit appropriate for collective bargaining indicate a desire to be represented by a labor organization, then the board, after determining pursuant to Section 30751 that the labor organization represents the employees in the appropriate unit, shall bargain with the accredited representative of those employees. Both parties shall bargain in good faith and make all reasonable efforts to reach agreement on the terms of a written contract governing wages, hours, and working conditions. In the absence of the expression of the desire to be represented by a labor organization, employees are subject to any personnel system established pursuant to Section 30257.

(b) Upon the acquisition by the district of the property of the Los Angeles Metropolitan Transit Authority pursuant to Chapter 8 (commencing with Section 31000), the district shall assume and observe all existing labor contracts and shall recognize the labor organization certified to represent the employees in each existing bargaining unit as

the sole representative of the employees in each of those bargaining units. Any certification of a labor organization previously made by the California State Mediation and Conciliation Service under the provisions of the Los Angeles Metropolitan Transit Authority Act of 1957 to represent or act for the employees in any collective bargaining unit shall remain in full force and effect and shall be binding upon the district. Those certifications and any certifications made under this subdivision shall not be subject to challenge on the grounds that a new substantial question of representation within the collective bargaining unit exists until the lapse of one year from the date of certification or the expiration of any collective bargaining agreement, whichever is later; provided, that no collective bargaining agreement shall be construed to be a bar to representation proceedings for a period of more than two years.

(c) The obligation of the district to bargain in good faith with a duly designated or certified labor organization and to execute a written collective bargaining agreement with that labor organization covering the wages, hours, and working conditions of the employees represented by that labor organization in an appropriate unit, and to comply with the terms of that collective bargaining agreement, shall not be limited or restricted by any other provision of law. The obligation of the district to bargain collectively shall extend to all subjects of collective bargaining, including, but not limited to, retroactive pay increases. Notwithstanding any other provision of law, the district shall make deductions from the wages and salaries of its employees, upon receipt of authorization to make those deductions, for the payment of union dues, fees, or assessments, for the payment of contributions pursuant to any health and welfare plan or pension plan, or for any other purpose for which deductions may be authorized by employees where the deductions are pursuant to a collective bargaining agreement with a duly designated or certified labor organization.

(d) (1) If a dispute arises over wages, hours, or working conditions that is not resolved by negotiations conducted in good faith between the board and the representatives of the employees, then upon the agreement of both parties, the board and the representative of the employees may submit the dispute to an arbitration board. The decision of a majority of the arbitration board shall be final and binding.

(2) (A) The arbitration board shall be composed of two representatives of the district, two representatives of the labor organization, and a fifth member to be agreed upon by the representatives of the district and labor organization.

(B) If the representatives of the district and labor organization are unable to agree on the fifth member, then the names of five persons experienced in labor arbitration shall be obtained from the California

State Mediation and Conciliation Service within the Department of Industrial Relations. The labor organization and the district shall, alternately, strike a name from the list supplied by the California State Mediation and Conciliation Service. The labor organization and the district shall determine by lot who shall first strike a name from the list. After the labor organization and the district have stricken four names, the name remaining shall be designated as the arbitrator. The decision of a majority of the arbitration board shall be final and binding upon the parties.

(C) The district and the labor organization shall each pay half of the cost of the impartial arbitrator.

(e) A contract or agreement shall not be made with any labor organization, association, group, or individual that denies membership on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code. However, the organization may preclude from membership any individual who advocates the overthrow of the government by force or violence.

(f) The district shall not discriminate with regard to employment against any person on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code.

SEC. 21. Section 50120 of the Public Utilities Code is amended to read:

50120. (a) If a majority of the employees employed by a transit district in a unit appropriate for collective bargaining indicate a desire to be represented by a labor organization, then the board, after determining pursuant to Section 50121 that the labor organization represents the employees in the appropriate unit, shall bargain with the accredited representative of those employees. Both parties shall bargain in good faith and make all reasonable efforts to reach agreement on the terms of a written contract governing wages, salaries, hours, working conditions, and grievance procedures.

(b) (1) If a dispute arises over the terms of a written contract governing wages, salaries, hours, or working conditions that is not resolved by negotiations conducted in good faith between the board and the representatives of the employees, then the board and the representatives of the employees shall submit the dispute to an arbitration board. The decision of a majority of the arbitration board shall be final.

(2) (A) The arbitration board shall be composed of two representatives of the transit board, two representatives of the labor

organization, and a fifth member to be agreed upon by the representatives of the transit board and labor organization.

(B) If the representatives of the transit board and labor organization are unable to agree on the fifth member, then the names of five persons experienced in labor arbitration shall be obtained from the California State Mediation and Conciliation Service within the Department of Industrial Relations. The labor organization and the district shall, alternately, strike a name from the list supplied by the California State Mediation and Conciliation Service. The labor organization and the district shall determine by lot who shall first strike a name from the list. After the labor organization and the transit district have stricken four names, the name remaining shall be designated as the arbitrator.

(C) The transit board and the labor organization shall each pay half of the cost of the impartial arbitrator.

(c) A contract or agreement shall not be made with any labor organization, association, group, or individual that denies membership on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code. However, the organization may preclude from membership any individual who advocates the overthrow of the government by force or violence.

(d) The district shall not discriminate with regard to employment against any person on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code.

SEC. 22. Section 70121 of the Public Utilities Code is amended to read:

70121. (a) A contract or agreement shall not be made, or assumed, with any labor organization, association, group, or individual that denies membership to, or in any manner discriminates against, any employee on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code. However, the organization may preclude from membership any individual who advocates the overthrow of the government by force or violence.

(b) The district shall not discriminate with regard to employment against any person on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code.

SEC. 23. Section 90300 of the Public Utilities Code is amended to read:

90300. (a) Employees have the right to self-organize, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. It is declared to be in the public interest that the district not express any preference for one union over another.

(1) (A) Notwithstanding any other provision of this act, if a majority of the employees employed by a district in a unit appropriate for collective bargaining indicate a desire to be represented by a labor organization, then the district, after determining pursuant to subdivision (f) that the labor organization represents the employees in the appropriate unit, shall enter into a written contract with the accredited representative of those employees governing wages, salaries, hours, and working conditions.

(B) (i) If a dispute arises over wages, salaries, hours, or working conditions that is not resolved by negotiations conducted in good faith between the district and the labor organization, then upon the request of either party, the district and the labor organization may submit the dispute to an arbitration board. The decision of a majority of the arbitration board shall be final.

(ii) The arbitration board shall be composed of two representatives of the district, two representatives of the labor organization, and a fifth member to be agreed upon by the representatives of the district and labor organization.

(iii) If the representatives of the district and labor organization are unable to agree on the fifth member, then the names of five persons experienced in labor arbitration shall be obtained from the California State Mediation and Conciliation Service within the Department of Industrial Relations. The labor organization and the district shall, alternately, strike a name from the list supplied by the California State Mediation and Conciliation Service. The labor organization and the district shall determine by lot who shall first strike a name from the list. After the labor organization and the district have stricken four names, the name remaining shall be designated as the arbitrator. The decision of a majority of the arbitration board shall be final and binding upon the parties.

(iv) The expenses of arbitration shall be borne equally by the parties. Each party shall bear the party's own costs.

(b) If the board and the representatives of the employees do not agree to submit the dispute to an arbitration board as provided in subdivision (a), either party may notify the California State Mediation and Conciliation Service that a dispute exists and that there is no agreement to arbitrate. The California State Mediation and Conciliation Service shall determine whether or not the dispute can be resolved by the parties

and, if not, the issues that are the subject of the dispute. After making its determination, the service shall certify its findings to the Governor who shall, within 10 days of receipt of certification, appoint a factfinding commission consisting of three persons. The factfinding commission shall immediately convene and investigate the issues involved in the dispute. The commission shall report to the Governor within 30 days of the date of its creation.

(c) After the creation of the commission and for 30 days after the date the commission made its report to the Governor, the parties to the controversy shall not make any change, except by mutual agreement, in the conditions out of which the dispute arose. Service to the public shall be provided during that time.

(d) A contract or agreement shall not be made, or assumed, with any labor organization, association, group, or individual that denies membership to, or in any manner discriminates against, any employee on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code. However, the organization may preclude from membership any individual who advocates the overthrow of the government by force or violence.

(e) The district shall not discriminate with regard to employment against any person on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code.

(f) (1) Any questions regarding whether a labor organization represents a majority of employees or whether the proposed unit is or is not appropriate, shall be submitted to the California State Mediation and Conciliation Service for disposition. The California State Mediation and Conciliation Service shall promptly hold a public hearing after due notice to all interested parties to determine the unit appropriate for the purposes of collective bargaining. In making that determination and in establishing rules and regulations governing petitions and the conduct of hearings and elections, the California State Mediation and Conciliation Service shall be guided by relevant federal law and administrative practice, developed under the Labor-Management Relations Act of 1947 (29 U.S.C. Sec. 141 et seq.).

(2) The California State Mediation and Conciliation Service shall provide for an election to determine the question of representation and shall certify the results to the parties. A certification of a labor organization to represent or act for the employees in any collective bargaining unit shall not be subject to challenge on the grounds that a new substantial question of representation within the collective bargaining unit exists until the lapse of one year from the date of

certification or the expiration of any collective bargaining agreement, whichever is later. However, no collective bargaining agreement shall be construed to be a bar to representation proceedings for a period of more than two years.

(g) If the district acquires existing facilities from a publicly or privately owned public utility, either in proceedings by eminent domain or otherwise, the district shall assume and observe all existing labor contracts.

(1) To the extent necessary for operation of facilities, all of the employees of the acquired public utility whose duties pertain to the facilities acquired shall be appointed to comparable positions in the district without examination, subject to all the rights and benefits of this act. Those employees shall be given sick leave, seniority, vacation, and pension credits in accordance with the records and labor agreements of the acquired public utility.

(2) Members and beneficiaries of any pension or retirement system, or other benefits established by the public utility, shall continue to have the rights, privileges, benefits, obligations, and status with respect to the established system. No employee of any acquired public utility may be subject to a reduction in wages, seniority, pension, vacation, or other benefits as a result of the acquisition.

(3) The district may extend the benefits of this section to officers or supervisory employees of the acquired utility.

(h) The district shall not do any of the following:

(1) Acquire any existing system or part of an existing system, whether by purchase, lease, condemnation, or otherwise.

(2) Dispose of or lease any transit system or part of the transit system.

(3) Merge, consolidate, or coordinate any transit system or part of the transit system.

(4) Reduce or limit the lines or service of any existing system or of the district's system unless the district has first made adequate provision for any employees who are or may be displaced. The terms and conditions of that provision shall be a proper subject of collective bargaining.

(i) Notwithstanding any provision of the Government Code, the district may make deductions from the wages and salaries of its employees who authorize the deductions for the following purposes:

(1) Pursuant to a collective bargaining agreement with a duly designated or certified labor organization, for the payment of union dues, fees, or assessments.

(2) For the payment of contributions pursuant to any health and welfare plan, or pension or retirement plan.

(3) For any purpose for which employees of any private employer may authorize deductions.

(j) (1) The obligation of the district to bargain in good faith with a duly designated or certified labor organization and to execute a written collective bargaining agreement with that labor organization covering the wages, hours, and working conditions of the employees represented by that labor organization in an appropriate unit, and to comply with the terms of the collective bargaining agreement, shall not be limited or restricted by any provision of law. The obligation of the district to bargain collectively shall extend to all subjects of collective bargaining that are or may be proper subjects of collective bargaining with a private employer, including retroactive provisions.

(2) Notwithstanding any other provision of law, the district shall make deductions from the wages and salaries of its employees, upon receipt of authorization to make those deductions, for the payment of union dues, fees, or assessments, for the payment of contributions pursuant to any health and welfare plan or pension plan, or for any other purpose for which employees of any private employer may authorize deductions, where those deductions are pursuant to a collective bargaining agreement with a duly designated or certified labor organization.

(k) The district may provide for a retirement system, provided that the adoption, terms, and conditions of any retirement system covering employees of the district represented by a labor organization in accordance with this section shall be pursuant to a collective bargaining agreement between the or organization and the district.

(*l*) The district shall take any steps that may be necessary to obtain coverage for the district and its employees under Title II of the Federal Social Security Act (42 U.S.C. Sec. 401 et seq.), and the related provisions of the Federal Insurance Contributions Act (26 U.S.C. Sec. 3101 et seq.).

(m) The district shall take any steps that may be necessary to obtain coverage for the district and its employees under the workers' compensation (Division 4 (commencing with Section 3200) and Division 4.5 (commencing with Section 6100) of the Labor Code), unemployment compensation disability (Part 2 (commencing with Section 2691) of Division 1 of the Unemployment Insurance Code), and unemployment insurance (Part 1 (commencing with Section 100) of Division 1 of the Unemployment Insurance Code) laws of the State of California.

SEC. 24. Section 95650 of the Public Utilities Code is amended to read:

95650. (a) If a majority of the employees employed by a transit district in a unit appropriate for collective bargaining indicate a desire to be represented by a labor organization, then the board after determining pursuant to Section 95651 that the labor organization

represents the employees in the appropriate unit, shall bargain with the accredited representative of those employees. Both parties shall bargain in good faith and make all reasonable efforts to reach agreement on the terms of a written contract governing wages, salaries, hours, working conditions, and grievance procedures.

(1) If a dispute arises over the terms of a written contract governing wages, salaries, hours, or working conditions that is not resolved by negotiations conducted in good faith between the board and the representatives of the employees, then the board and the representatives of the employees shall submit the dispute to an arbitration board. The decision of a majority of the arbitration board shall be final.

(2) (A) The arbitration board shall be composed of two representatives of the transit board, two representatives of the labor organization, and a fifth member to be agreed upon by the representatives of the transit board and labor organization. If the representatives of the transit board and labor organization are unable to agree on the fifth member, then the names of five persons experienced in labor arbitration shall be obtained from the California State Mediation and Conciliation Service within the Department of Industrial Relations.

(B) The labor organization and the district shall, alternately, strike a name from the list supplied by the California State Mediation and Conciliation Service. The labor organization and the district shall determine by lot who shall first strike a name from the list. After the labor organization and the district have stricken four names, the name remaining shall be designated as the arbitrator.

(C) The transit board and labor organization shall each pay half of the cost of the impartial arbitrator.

(c) A contract or agreement shall not be made with any labor organization, association, group, or individual that denies membership on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code. However, the organization may preclude from membership any individual who advocates the overthrow of the government by force or violence.

(d) The district shall not discriminate with regard to employment against any person on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code.

SEC. 25. Section 98161 of the Public Utilities Code is amended to read:

98161. All citizens shall have equal opportunity to obtain and hold employment, and to advance in that employment, without discrimination on any basis listed in subdivision (a) of Section 12940 of

the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code.

SEC. 26. Section 100303 of the Public Utilities Code is amended to read:

100303. (a) A contract or agreement shall not be made with any labor organization, association, group, or individual that denies membership on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code. However, the organization may preclude from membership any individual who advocates the overthrow of the government by force or violence.

(b) The district shall not discriminate with regard to employment against any person on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code.

SEC. 27. Section 101343 of the Public Utilities Code is amended to read:

101343. (a) A contract or agreement shall not be made, or assumed under this part, with any labor organization, association, or group that denies membership to, or in any manner discriminates against, any employee on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code. However, the organization may preclude from membership any individual who advocates the overthrow of the government by force or violence.

(b) The district shall not discriminate with regard to employment against any person on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code.

SEC. 28. Section 102402 of the Public Utilities Code is amended to read:

102402. (a) A contract or agreement shall not be made, or assumed under this article, with any labor organization, association, or group that denies membership to, or in any manner discriminates against, any employee on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code. However, the organization may preclude from membership any individual who advocates the overthrow of the government by force or violence.

(b) The district shall not discriminate with regard to employment against any person on any basis listed in subdivision (a) of Section 12940

of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code.

SEC. 29. Section 103403 of the Public Utilities Code is amended to read:

103403. (a) A contract or agreement shall not be made with any labor organization, association, or group that denies membership on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code. However, the organization may preclude from membership any individual who advocates the overthrow of the government by force or violence.

(b) The district shall not discriminate with regard to employment against any person on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code.

SEC. 30. Section 120504 of the Public Utilities Code is amended to read:

120504. (a) A contract or agreement shall not be made with any labor organization, association, or group that denies membership to, or in any manner discriminates against, any employee on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code.

(b) The board shall not discriminate with regard to employment against any person on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code.

SEC. 31. Section 125523 of the Public Utilities Code is amended to read:

125523. (a) A contract or agreement shall not be made with any labor organization, association, or group that denies membership on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code. However, the organization may preclude from membership any individual who advocates the overthrow of the government by force or violence.

(b) The district shall not discriminate with regard to employment against any person on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code.

SEC. 32. Section 1256.2 of the Unemployment Insurance Code is amended to read:

1256.2. (a) Except as otherwise provided in subdivision (b), an individual who terminates his or her employment shall not be deemed to have left his or her most recent work without good cause if his or her employer deprived the individual of equal employment opportunities on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code.

(b) Subdivision (a) does not apply to the following:

(1) A deprivation of equal employment opportunities that is based upon a bona fide occupational qualification or applicable security regulations established by the United States or this state, specifically, as provided in Section 12940 of the Government Code.

(2) An individual who fails to make reasonable efforts to provide the employer with an opportunity to remove any unintentional deprivation of the individual's equal employment opportunities.

SEC. 33. Section 11320.31 of the Welfare and Institutions Code is amended to read:

11320.31. Sanctions shall not be applied for a failure or refusal to comply with program requirements for reasons related to employment, an offer of employment, an activity, or other training for employment including, but not limited to, the following reasons:

(a) The employment, offer of employment, activity, or other training for employment discriminates on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code.

(b) The employment or offer of employment exceeds the daily or weekly hours of work customary to the occupation.

(c) The employment, offer of employment, activity, or other training for employment requires travel to and from the place of employment, activity, or other training and one's home that exceeds a total of two hours in round-trip time, exclusive of the time necessary to transport family members to a school or place providing care, or, when walking is the only available means of transportation, the round-trip is more than two miles, exclusive of the mileage necessary to accompany family members to a school or a place providing care. An individual who fails or refuses to comply with the program requirements based on this subdivision shall be required to participate in community service activities pursuant to Section 11322.9.

(d) The employment, offer of employment, activity, or other training for employment involves conditions that are in violation of applicable health and safety standards.

(e) The employment, offer of employment, or work activity does not provide for workers' compensation insurance.

(f) Accepting the employment or work activity would cause an interruption in an approved education or job training program in progress that would otherwise lead to employment and sufficient income to be self-supporting, excluding work experience or community service employment as described in subdivisions (d) and (j) of Section 11322.6 and Section 11322.9 or other community work experience assignments, except that a recipient may be required to engage in welfare-to-work activities to the extent necessary to meet the hours of participation required by Section 11322.8.

(g) Accepting the employment, offer of employment, or work activity would cause the individual to violate the terms of his or her union membership.

SEC. 34. Section 11322.62 of the Welfare and Institutions Code is amended to read:

11322.62. Employers, sponsors of training activities, and contractors shall not discriminate against participants on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code.

SEC. 35. Section 14087.28 of the Welfare and Institutions Code is amended to read:

14087.28. (a) A hospital contracting with the Medi-Cal program pursuant to this chapter shall not deny medical staff membership or clinical privileges for reasons other than a physician's individual qualifications as determined by professional and ethical criteria, uniformly applied to all medical staff applicants and members. Determination of medical staff membership or clinical privileges shall not be made upon the basis of any of the following:

(1) The existence of a contract with the hospital or with others.

(2) Membership in, or affiliation with, any society, medical group, or teaching facility, or upon the basis of any criteria lacking professional justification, such as any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code.

(b) The special negotiator may authorize a contracting hospital to impose reasonable limitations on the granting of medical staff membership or clinical privileges to permit an exclusive contract for the provision of pathology, radiology, and anesthesiology services, except for consulting services requested by the admitting physician.

SEC. 36. 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 789

An act to amend Section 714 of the Civil Code, to repeal and add Section 65850.5 of the Government Code, and to repeal and add Section 17959.1 of the Health and Safety Code, relating to solar energy.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 25, 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) According to the State Energy Resources Conservation and Development Commission, California could face a shortage of reliable electricity and natural gas supplies within the next few years.

(2) The State of California has a longstanding policy of encouraging the construction of clean, renewable, and distributed energy systems, as evidenced by its investment of $135 million in renewable electrical generation resources through the Reliable Electric Service Investments Act (Article 15 (commencing with Section 399) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code), and enactment into law of Section 25619 of the Public Resources Code, which authorized funds for a solar water heating grant program in the 1999–2000 Regular Session. The state has set a statewide goal of increasing renewable generation sources so that 17 percent of total electricity generation originates from renewable energy (Section 383.5 of the Public Utilities Code).

(3) The 2003 Energy Action Plan jointly prepared and adopted by the State Energy Resources Conservation and Development Commission and the California Public Utilities Commission strongly promotes customer owned electricity generation and renewable resources. Solar thermal energy technologies that reduce the consumption of natural gas or electricity will play an increasingly prominent role in California's energy portfolio future.

(4) The Legislature, the State Energy Resources Conservation and Development Commission, and the California Public Utilities Commission recognize solar energy technologies as abundant, renewable, and nonpolluting energy resources that reduce California's dependence on nonrenewable energy while reducing air and water pollution resulting from fossil fuel-based sources. Solar energy systems enhance the reliability and power quality of the electrical grid, reduce peak power demands, increase in-state electricity generation, liberate natural gas supplies for electricity generation purposes, diversify the state's energy supply portfolio, and make the electricity supply market more competitive by promoting consumer choice.

(5) The installation and operation of solar energy systems do not create adverse impacts on health, safety, or noise in areas where those systems are installed. In some jurisdictions, however, overly onerous and burdensome rules, regulations, or ordinances make the approval and installation of solar energy systems uneconomic because of time-consuming processes that frequently result in the denial of project approval due solely to aesthetic concerns.

(6) In light of existing state policies that promote the utilization of renewable energy resources in order to prevent future electricity and natural gas shortages, which have been enacted in order to protect the environment by encouraging the increased use of nonpolluting energy resources, it is the intent of the Legislature that local agencies do not adopt ordinances that create unreasonable barriers to the installation of solar energy systems, including, but not limited to, design review for aesthetic purposes, and do not unreasonably restrict the ability of homeowners, agricultural concerns, and business concerns to install solar energy systems. It is the policy of the state to promote and encourage the use of solar energy systems and to limit obstacles to their use.

(b) The implementation of consistent statewide standards to achieve the timely and cost effective installation of solar energy systems is not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution, but is instead a matter of statewide concern. It is the intent of the Legislature that local governments comply not only with the language of this act, but also the legislative intent to encourage the installation of solar energy systems by removing obstacles to, and minimizing costs of, permitting for such systems.

SEC. 2. Section 714 of the Civil Code is amended to read:

714. (a) Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of, or any interest in, real property that effectively prohibits or restricts the installation or use of a solar energy system is void and unenforceable.

(b) This section does not apply to provisions that impose reasonable restrictions on solar energy systems. However, it is the policy of the state to promote and encourage the use of solar energy systems and to remove obstacles thereto. Accordingly, reasonable restrictions on a solar energy system are those restrictions that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or that allow for an alternative system of comparable cost, efficiency, and energy conservation benefits.

(c) (1) A solar energy system shall meet applicable health and safety standards and requirements imposed by state and local permitting authorities.

(2) A solar energy system for heating water shall be certified by the Solar Rating Certification Corporation (SRCC) or other nationally recognized certification agencies. SRCC is a nonprofit third party supported by the United States Department of Energy. The certification shall be for the entire solar energy system and installation.

(3) A solar energy system for producing electricity shall also meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

(d) For the purposes of this section:

(1) (A) For solar domestic water heating systems or solar swimming pool heating systems that comply with state and federal law, ''significantly'' means an amount exceeding 20 percent of the cost of the system or decreasing the efficiency of the solar energy system by an amount exceeding 20 percent, as originally specified and proposed.

(B) For photovoltaic systems that comply with state and federal law, ''significantly'' means an amount not to exceed two thousand dollars ($2,000) over the system cost as originally specified and proposed, or a decrease in system efficiency of an amount exceeding 20 percent as originally specified and proposed.

(2) ''Solar energy system'' has the same meaning as defined in paragraphs (1) and (2) of subdivision (a) of Section 801.5.

(e) Whenever approval is required for the installation or use of a solar energy system, the application for approval shall be processed and approved by the appropriate approving entity in the same manner as an application for approval of an architectural modification to the property, and shall not be willfully avoided or delayed.

(f) Any entity, other than a public entity, that willfully violates this section shall be liable to the applicant or other party for actual damages occasioned thereby, and shall pay a civil penalty to the applicant or other party in an amount not to exceed one thousand dollars ($1,000).

(g) In any action to enforce compliance with this section, the prevailing party shall be awarded reasonable attorney's fees.

(h) (1) A public entity that fails to comply with this section may not receive funds from a state-sponsored grant or loan program for solar energy. A public entity shall certify its compliance with the requirements of this section when applying for funds from a state-sponsored grant or loan program.

(2) A local public entity may not exempt residents in its jurisdiction from the requirements of this section.

SEC. 3. Section 65850.5 of the Government Code is repealed.

SEC. 4. Section 65850.5 is added to the Government Code, to read:

65850.5. (a) The implementation of consistent statewide standards to achieve the timely and cost-effective installation of solar energy systems is not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution, but is instead a matter of statewide concern. It is the intent of the Legislature that local agencies not adopt ordinances that create unreasonable barriers to the installation of solar energy systems, including, but not limited to, design review for aesthetic purposes, and not unreasonably restrict the ability of homeowners and agricultural and business concerns to install solar energy systems. It is the policy of the state to promote and encourage the use of solar energy systems and to limit obstacles to their use. It is the intent of the Legislature that local agencies comply not only with the language of this section, but also the legislative intent to encourage the installation of solar energy systems by removing obstacles to, and minimizing costs of, permitting for such systems.

(b) A city or county shall administratively approve applications to install solar energy systems through the issuance of a building permit or similar nondiscretionary permit. Review of the application to install a solar energy system shall be limited to the building official's review of whether it meets all health and safety requirements of local, state, and federal law. The requirements of local law shall be limited to those standards and regulations necessary to ensure that the solar energy system will not have a specific, adverse impact upon the public health or safety. However, if the building official of the city or county has a good faith belief that the solar energy system could have a specific, adverse impact upon the public health and safety, the city or county may require the applicant to apply for a use permit.

(c) A city or county may not deny an application for a use permit to install a solar energy system unless it makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific,

adverse impact. The findings shall include the basis for the rejection of potential feasible alternatives of preventing the adverse impact.

(d) The decision of the building official pursuant to subdivisions (b) and (c) may be appealed to the planning commission of the city or county.

(e) Any conditions imposed on an application to install a solar energy system shall be designed to mitigate the specific, adverse impact upon the public health and safety at the lowest cost possible.

(f) (1) A solar energy system shall meet applicable health and safety standards and requirements imposed by state and local permitting authorities.

(2) A solar energy system for heating water shall be certified by the Solar Rating Certification Corporation (SRCC) or other nationally recognized certification agency. SRCC is a nonprofit third party supported by the United States Department of Energy. The certification shall be for the entire solar energy system and installation.

(3) A solar energy system for producing electricity shall meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

(g) The following definitions apply to this section:

(1) ''A feasible method to satisfactorily mitigate or avoid the specific, adverse impact'' includes, but is not limited to, any cost-effective method, condition, or mitigation imposed by a city or county on another similarly situated application in a prior successful application for a permit. A city or county shall use its best efforts to ensure that the selected method, condition, or mitigation meets the conditions of subparagraphs (A) and (B) of paragraph (1) of subdivision (d) of Section 714 of the Civil Code.

(2) ''Solar energy system'' has the same meaning set forth in paragraphs (1) and (2) of subdivision (a) of Section 801.5 of the Civil Code.

(3) A ''specific, adverse impact'' means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

SEC. 5. Section 17959.1 of the Health and Safety Code is repealed.

SEC. 6. Section 17959.1 is added to the Health and Safety Code, to read:

17959.1. (a) A city or county shall administratively approve applications to install solar energy systems though the issuance of a building permit or similar nondiscretionary permit. However, if the

building official of the city or county has a good faith belief that the solar energy system could have a specific, adverse impact upon the public health and safety, the city or county may require the applicant to apply for a use permit.

(b) A city or county may not deny an application for a use permit to install a solar energy system unless it makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. This finding shall include the basis for the rejection of potential feasible alternatives of preventing the adverse impact.

(c) Any conditions imposed on an application to install a solar energy system must be designed to mitigate the specific, adverse impact upon the public health and safety at the lowest cost possible.

(d) (1) A solar energy system shall meet applicable health and safety standards and requirements imposed by state and local permitting authorities.

(2) A solar energy system for heating water shall be certified by the Solar Rating Certification Corporation (SRCC) or other nationally recognized certification agency. SRCC is a nonprofit third party supported by the United States Department of Energy. The certification shall be for the entire solar energy system and installation.

(3) A solar energy system for producing electricity shall meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

(e) The following definitions apply to this section:

(1) ''A feasible method to satisfactorily mitigate or avoid the specific, adverse impact'' includes, but is not limited to, any cost effective method, condition, or mitigation imposed by a city or county on another similarly situated application in a prior successful application for a permit. A city or county shall use its best efforts to ensure that the selected method, condition, or mitigation meets the conditions of subparagraphs (A) and (B) of paragraph (1) of subdivision (d) of Section 714 of the Civil Code.

(2) ''Solar energy system'' has the meaning set forth in paragraphs (1) and (2) of subdivision (a) of Section 801.5 of the Civil Code.

(3) A ''specific, adverse impact'' means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

SEC. 7. 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 790

An act to add Section 2828 to the Public Utilities Code, relating to private energy producers.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 25, 2004.]

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

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

(a) Increasing California's use of solar generated electricity can promote stable electricity prices, protect public health, improve environmental quality, create new employment opportunities, and reduce reliance on fossil fuels.

(b) Electricity for municipal facilities of the City and County of San Francisco is provided by Hetch Hetchy Water and Power through electric transmission and distribution lines owned by Pacific Gas and Electric Company. This situation is unique to the City and County of San Francisco.

(c) The City and County of San Francisco has declared its intention to become a community choice aggregator, but until the City and County of San Francisco begins to procure electricity pursuant to implementation of community choice aggregation, the City and County of San Francisco has no acceptable mechanism to market the temporarily existing excess generation of proposed photovoltaic projects to be located at San Francisco municipal sites and which may on occasion exceed the load at the site.

(d) San Francisco is located in a transmission constrained area that currently requires local generation. Development of solar electric facilities in San Francisco can improve electric service reliability and lessen air pollution from fossil fuel powerplants located in the city and county.

(e) Compensation for the electricity produced from Hetch Hetchy Water and Power solar generation facilities are in the public interest.

SEC. 2. Section 2828 is added to the Public Utilities Code, to read:

2828. (a) As used in this section, the following terms have the following meanings:

(1) ''Environmental attributes'' associated with the Hetch Hetchy Water and Power solar generation include, but are not limited to, the credits, benefits, emissions reductions, environmental air quality credits, and emissions reduction credits, offsets, and allowances, however entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance attributable to the Hetch Hetchy Water and Power photovoltaic electricity generation facility owned by the City and County of San Francisco.

(2) ''HHWP solar generation'' means the electricity generated by Hetch Hetchy Water and Power photovoltaic electricity generation facilities owned by the City and County of San Francisco, designated by the City and County of San Francisco pursuant to subdivision (b) and not to exceed five megawatts of peak generation capacity in total.

(3) ''Interconnection Agreement'' means the 1987 agreement between Pacific Gas and Electric Company and the City and County of San Francisco, as filed with and accepted by the Federal Energy Regulatory Commission (FERC), and as amended from time to time with FERC approval, which provides for rates for transmission, distribution, and sales of supplemental electricity to the City and County of San Francisco. Nothing in this section shall waive or modify the rights of parties under the Interconnection Agreement or the jurisdiction of the FERC over rates set forth in the Interconnection Agreement.

(4) ''Appropriate TOU tariff'' means the Time-of-Use tariff that would be applicable to the City and County of San Francisco account at the photovoltaic project site if the facility at the site were a Pacific Gas and Electric Company bundled customer, as determined by Pacific Gas and Electric Company.

(b) The City and County of San Francisco may elect to designate specific photovoltaic electricity generation facilities as HHWP solar generation, if all of the following conditions are met:

(1) No single photovoltaic generation project exceeds one megawatt of peak generation capacity.

(2) The photovoltaic project utilizes a meter, or multiple meters, capable of separately measuring electricity flow in both directions. All meters shall provide ''time-of-use'' measurement information. If the existing meter at the site of the photovoltaic project is not capable of providing time-of-use information or is not capable of separately measuring total flow of energy in both directions, the City and County of San Francisco is responsible for all expenses involved in purchasing and installing a meter or meters that are both capable of providing

time-of-use information and able to separately measure total electricity flow in both directions.

(3) The amount of all electricity delivered to the electric grid by the designated HHWP solar generation is the property of Pacific Gas and Electric Company.

(4) The City and County of San Francisco does not sell electricity delivered to the electric grid from the designated HHWP solar generation to a third party.

(5) Ownership and use of the environmental attributes associated with the electricity delivered to the electric grid by HHWP solar generation shall be determined by the commission in accordance with Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1.

(c) For each site of a photovoltaic project that comprises the HHWP solar generation, Pacific Gas and Electric Company shall identify the appropriate TOU tariff for that site. Any electricity exported to the Pacific Gas and Electric Company grid at that site shall, for each time-of-use period, result in a monetary credit to be applied monthly as a credit or offset against the invoice created pursuant to the Interconnection Agreement and shall be valued at the generation component of the appropriate TOU tariff. The commission shall determine if it is appropriate to increase the credit to reflect any additional value derived from the location or the environmental attributes of, the designated HHWP solar generation.

(d) Monthly charges and credit amounts are interim and subject to an accounting true-up, consistent with commission policies and practices. The true-up shall be performed annually or upon the termination, for any reason, of the Interconnection Agreement. The true-up shall accomplish the following:

(1) If the total electricity delivered to the site by Pacific Gas and Electric Company since the previous true-up equals or exceeds the total electricity exported to the grid by the Hetch Hetchy photovoltaic electricity generation facility at the site, the City and County of San Francisco is a net electricity consumer at that site. For any site where the City and County of San Francisco is a net electricity consumer, a credit or offset shall be applied to reduce the obligations of the City and County of San Francisco to an invoice prepared pursuant to the Interconnection Agreement. If there is no invoiced obligation to be reduced, there is no applicable credit.

(2) If the total electricity delivered to the site by Pacific Gas and Electric Company since the previous true-up is less than the total electricity exported to the grid by the Hetch Hetchy photovoltaic electricity generation facility at the site, the City and County of San Francisco is a net electricity producer at that site. For any site where the City and County of San Francisco is a net electricity producer, the City

and County of San Francisco shall receive no credit or offset for the electricity exported to the grid in excess of the electricity delivered to the site from the grid. For any site where the City and County of San Francisco is a net electricity producer, the City and County of San Francisco shall receive a credit or offset up to the amount of electricity delivered to the site from the grid. The credit or offset shall be applied to reduce the obligations of the City and County of San Francisco to an invoice prepared pursuant to the Interconnection Agreement. If there is no invoiced obligation to be reduced, there is no applicable credit or offset. Pacific Gas and Electric Company shall use the last-in, first-out method to determine what electricity delivered to the grid from the site will not earn a credit or offset.

(e) Notwithstanding any other provision of this section, if the City and County of San Francisco engages in retail sales to customers within the service territory of Pacific Gas and Electric Company, as a result of becoming a community choice aggregator, as a result of municipalization, or otherwise, all other provisions of this section become inoperative.

(f) Pursuant to this section, the offset to charges under the Interconnection Agreement is the medium to convey credits earned under this section. Nothing in this section shall be construed to affect in any way the rights and obligations of the City and County of San Francisco and Pacific Gas and Electric Company under the Interconnection Agreement.

(g) Pacific Gas and Electric Company shall file an advice letter with the commission, that complies with this section, not later than 10 days after the City and County of San Francisco first designates the specific generation facilities that will comprise HHWP solar generation. The commission, within 30 days of the date of filing of the advice letter, shall approve the advice letter or specify conforming changes to be made by Pacific Gas and Electric Company to be filed in an amended advice letter within 30 days.

(h) The City and County of San Francisco may terminate its election pursuant to subdivisions (b), (c), and (d), upon providing Pacific Gas and Electric Company with a minimum of 60 days' written notice.

SEC. 3. The Legislature finds and declares that, because of the unique circumstances applicable only to Hetch Hetchy Water and Power solar generation of electricity, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution. Therefore, this special statute is necessary.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will

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

CHAPTER 791

An act to add Sections 66536 and 66536.1 to the Government Code, relating to regional planning.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 25, 2004.]

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

SECTION 1. Section 66536 is added to the Government Code, to read:

66536. The Legislature finds and declares the following:

(a) The Association of Bay Area Governments, known as ABAG for the purposes of this section and Section 66536.1, and the Metropolitan Transportation Commission have collaborated on regional coordination.

(b) ABAG and MTC formed the ''ABAG-MTC Task Force'' in 2003 to review methods to improve comprehensive regional planning, including possible organizational and structural changes to ABAG and MTC.

(c) The ABAG-MTC Task Force agreed to set aside the issue of a merger between the ABAG and MTC and to develop a better structure for coordinated regional planning.

(d) The ABAG-MTC Task Force agreed to create a joint policy committee to develop staff support for that committee and to work on short- and long-term goals. Formation of the joint policy committee can result in substantial real progress in resolving regional transportation problems.

(e) The ABAG-MTC Task Force members agreed that structural changes were required in the working relationship between ABAG and MTC, and that the joint policy committee should have a substantial role in facilitating progress on regional transportation matters.

(f) There is a history of cooperation and coordination among the Bay Area Air Quality Management District, ABAG, and MTC.

(g) The three agencies are collectively responsible for developing and adopting air quality plans for national ambient air quality standards.

(h) Based on this history and collective involvement, and the interrelation between land use, transportation, and air quality, the Bay Area Air Quality Management District should be included as a represented agency on the joint policy committee by June 30, 2005. If the Bay Area Air Quality Management District has not been included by June 3, 2005, the Bay Area Air Quality Management District shall be included as a represented agency with an equal number of committee members.

SEC. 2. Section 66536.1 is added to the Government Code, to read:

66536.1. (a) The joint policy committee shall prepare a report analyzing the feasibility of consolidating functions separately performed by ABAG and MTC. The report shall be reviewed and approved by MTC and the ABAG executive board and submitted to the Legislature by January 1, 2006.

(b) The combined membership of the joint policy committee shall include at least one representative from each of the nine regional counties: Alameda, Contra Costa, Marin, Napa, Sonoma, San Mateo, San Francisco, Santa Clara, and Solano.

(c) The joint policy committee shall coordinate the development and drafting of major planning documents prepared by ABAG, MTC, and the Bay Area Air Quality Management District, including reviewing and commenting on major interim work products and the final draft comments prior to action by ABAG, MTC, and the Bay Area Air Quality Management District. These documents include, but are not limited to, the following:

(1) Beginning with the next plan update scheduled to be adopted in 2008, the regional transportation plan prepared by MTC and described in Section 66508 of the Government Code.

(2) The ABAG Housing Element planning process for regional housing needs pursuant to Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7.

(3) The Bay Area Air Quality Management District's Ozone Attainment Plan and Clean Air Plan.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 792

An act to amend Section 218 of the Revenue and Taxation Code, relating to disaster relief, to take effect immediately, tax levy.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 25, 2004.]

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

SECTION 1. Section 218 of the Revenue and Taxation Code is amended to read:

218. (a) The homeowners' property tax exemption is in the amount of the assessed value of the dwelling specified in this section, as authorized by subdivision (k) of Section 3 of Article XIII of the Constitution. That exemption shall be in the amount of seven thousand dollars ($7,000) of the full value of the dwelling.

(b) The exemption does not extend to property that is rented, vacant, under construction on the lien date, or that is a vacation or secondary home of the owner or owners, nor does it apply to property on which an owner receives the veteran's exemption.

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

(1) ''Owner'' includes a person purchasing the dwelling under a contract of sale or who holds shares or membership in a cooperative housing corporation, which holding is a requisite to the exclusive right of occupancy of a dwelling.

(2) (A) ''Dwelling'' means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, and any land on which it may be situated. A two-dwelling unit shall be considered as two separate single-family dwellings.

(B) ''Dwelling'' includes the following:

(i) A single-family dwelling occupied by an owner thereof as his or her principal place of residence on the lien date.

(ii) A multiple-dwelling unit occupied by an owner thereof on the lien date as his or her principal place of residence.

(iii) A condominium occupied by an owner thereof as his or her principal place of residence on the lien date.

(iv) Premises occupied by the owner of shares or a membership interest in a cooperative housing corporation, as defined in subdivision (i) of Section 61, as his or her principal place of residence on the lien date. Each exemption allowed pursuant to this subdivision shall be deducted from the total assessed valuation of the cooperative housing corporation. The exemption shall be taken into account in apportioning property taxes among owners of share or membership interests in the cooperative

housing corporations so as to benefit those owners who qualify for the exemption.

(d) Any dwelling that qualified for an exemption under this section prior to October 20, 1991, that was damaged or destroyed by fire in a disaster, as declared by the Governor, occurring on or after October 20, 1991, and before November 1, 1991, and that has not changed ownership since October 20, 1991, shall not be disqualified as a ''dwelling'' or be denied an exemption under this section solely on the basis that the dwelling was temporarily damaged or destroyed or was being reconstructed by the owner.

(e) Any dwelling that qualified for an exemption under this section prior to October 15, 2003, that was damaged or destroyed by fire or earthquake in a disaster, as declared by the Governor, during October, November, or December 2003, and that has not changed ownership since October 15, 2003, shall not be disqualified as a ''dwelling'' or be denied an exemption under this section solely on the basis that the dwelling was temporarily damaged or destroyed or was being reconstructed by the owner.

(f) Any dwelling that qualified for an exemption under this section prior to June 3, 2004, that was damaged or destroyed by flood in a disaster, as declared by the Governor, during June 2004, and that has not changed ownership since June 3, 2004, shall not be disqualified as a ''dwelling'' or be denied an exemption under this section solely on the basis that the dwelling was temporarily damaged or destroyed or was being reconstructed by the owner.

(g) The exemption provided for in subdivision (k) of Section 3 of Article XIII of the Constitution shall first be applied to the building, structure or other shelter and the excess, if any, shall be applied to any land on which it may be located.

SEC. 2. It is the intent of the Legislature to provide in the annual Budget Act those additional reimbursements to local governments that, as a result of this act, are required by Section 25 of Article XIII of the California Constitution.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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 793

An act to amend Sections 14552.2, 14553.4, and 14554.8 of the Government Code, relating to transportation.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 25, 2004.]

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

SECTION 1. Section 14552.2 of the Government Code is amended to read:

14552.2. (a) ''Eligible project'' means the federally funded portion of any highway or other transportation project that has been designated for accelerated construction by the commission, and increases the capacity, reduces the travel time, or provides long-life rehabilitation of the key bridges and roadways of a corridor or gateway for interregional travel and movement of goods.

(b) An eligible project that meets the conditions of subdivision (a) may include, but is not limited to, any of the following projects:

(1) Toll bridge seismic retrofit projects.

(2) Projects approved for funding under the Traffic Congestion Relief Act of 2000 (Chapter 4.5 (commencing with Section 14556)).

(3) Projects programmed under the current adopted State Transportation Improvement Program or the current State Highway Operation and Protection Program.

SEC. 2. Section 14553.4 of the Government Code is amended to read:

14553.4. The Treasurer may not authorize the issuance of notes if the annual repayment obligations of all outstanding notes in any fiscal year would exceed 15 percent of the total amount of federal transportation funds deposited in the State Highway Account in the State Transportation Fund for any consecutive 12-month period within the preceding 24 months.

SEC. 3. Section 14554.8 of the Government Code is amended to read:

14554.8. (a) Notwithstanding Section 13340 of the Government Code or any other provision of law, the amounts deposited in the State Highway Account in the State Transportation Fund from federal transportation funds, and pledged by the commission under this chapter,

are hereby continuously appropriated, without regard to fiscal years, to the Treasurer for the purposes of, and in accordance with, this chapter.

(b) Funds that are subject to Section 1 or 2 of Article XIX of the California Constitution may be used as the state or local principal match for any project that is eligible for federal matching funds and is funded pursuant to this chapter.

CHAPTER 794

An act to amend Sections 51283, 51283.4, and 51284.1 of, to add Section 51283.5 to, and to repeal and add Section 51203 of, the Government Code, relating to land conservation.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 25, 2004.]

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

SECTION 1. Section 51203 of the Government Code is repealed.

SEC. 2. Section 51203 is added to the Government Code, to read:

51203. (a) The assessor shall determine the current fair market value of the land as if it were free of the contractual restriction pursuant to Section 51283. The Department of Conservation or the landowner, also referred to in this section as ''parties,'' may provide information to assist the assessor to determine the value. Any information provided to the assessor shall be served on the other party, unless the information was provided at the request of the assessor, and would be confidential under law if required of an assessee.

(b) Within 45 days of receiving the assessor's notice pursuant to subdivision (a) of Section 51283 or 51283.4, if the Department of Conservation or the landowner believes that the current fair market valuation certified pursuant to subdivision (b) of Section 51283 or Section 51283.4 is not accurate, the department or the landowner may request formal review from the county assessor in the county considering the petition to cancel the contract. The department or the landowner shall submit to the assessor and the other party the reasons for believing the valuation is not accurate. The assessor may recover his or her reasonable costs of the formal review from the party requesting the review, and may provide an estimate of those costs to the requesting party. The recovery of these costs from the department may be deducted by the city or county from the cancellation fees received pursuant to this chapter prior to transmittal to the Controller for deposit in the Soil Conservation Fund.

(1) If no request is made within 45 days of receiving notice of the valuation, the assessor's valuation shall be used to calculate the fee.

(2) Upon receiving a request for formal review, the assessor may formally review his or her valuation. The assessor shall notify the parties that the formal review is being undertaken and that information to aid the assessor's review shall be submitted within 30 days of the date of the notice to the parties. Any information submitted to the assessor shall be served on the other party who shall have 30 days to respond to that information to the assessor. If the response to the assessor contains new information, the party receiving that response shall have 20 days to respond to the assessor as to the new information. All submittals and responses to the assessor shall be served on the other party by personal service or an affidavit of mailing. The assessor shall avoid ex parte contacts during the formal review and shall report any such contacts to the department and the landowner at the same time the review is complete. The assessor shall complete the review no later than 120 days of receiving the request.

(3) At the conclusion of the formal review, the assessor shall either revise the cancellation valuation or determine that the original cancellation valuation is accurate. The assessor shall send the revised valuation or notice of the determination that the valuation is accurate to the department, the landowner, and the board or council considering the petition to cancel the contract. The assessor shall include a brief narrative of what consideration was given to the items of information and responses directly relating to the cancellation value submitted by the parties. The assessor shall give no consideration to a party's information or response that was not served on the other party.

(c) For purposes of this section, the valuation date of any revised valuation pursuant to formal review or following judicial challenge shall remain the date of the assessor's initial valuation, or his or her initial recomputation pursuant to Section 51283.4. For purposes of cancellation fee calculation in a tentative cancellation as provided in Section 51283, or in a recomputation for final cancellation as provided in Section 51283.4, a cancellation value shall be considered current for one year after its determination and certification by the assessor.

(d) Notwithstanding any other provision of this section, the department and the landowner may agree on a cancellation valuation of the land. The agreed valuation shall serve as the cancellation valuation pursuant to Section 51283. The agreement shall be transmitted to the board or council considering the petition to cancel the contract.

(e) This section represents the exclusive administrative procedure for appealing a cancellation valuation calculated pursuant to this section. The Department of Conservation shall represent the interests of the state

in the administrative and judicial remedies for challenging the determination of a cancellation valuation or cancellation fee.

SEC. 3. 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 landowner and the Department of Conservation indicating the current fair market value of the land as though it were free of the contractual restriction. The notice shall advise the landowner and the department of the opportunity to request formal review from the assessor.

(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. 4. Section 51283.4 of the Government Code is amended to read:

51283.4. (a) Upon tentative approval of a petition accompanied by a proposal for a specified alternative use of the land, the clerk of the board or council shall record in the office of the county recorder of the county in which is located the land as to which the contract is applicable a certificate of tentative cancellation, which shall set forth the name of the landowner requesting the cancellation, the fact that a certificate of cancellation of contract will be issued and recorded at the time that specified conditions and contingencies are satisfied, a description of the conditions and contingencies which must be satisfied, and a legal description of the property. Conditions to be satisfied shall include payment in full of the amount of the fee computed under the provisions of Section 51283, together with a statement that unless the fee is paid, or a certificate of cancellation of contract is issued within one year from the date of the recording of the certificate of tentative cancellation, the fee shall be recomputed as of the date the landowner requests a recomputation. A landowner may request a recomputation when he or she believes that he or she will be able to satisfy the conditions and

contingencies of the certificate of cancellation within 180 days. The board or council shall request the assessor to recompute the cancellation valuation. The assessor shall recompute the valuation, certify it to the board or council, and provide notice to the Department of Conservation and landowner as provided in subdivision (a) of Section 51283, and the board or council shall certify the fee to the county auditor. Any provisions related to the waiver of the fee or portion thereof shall be treated in the manner provided for in the certificate of tentative cancellation. Contingencies to be satisfied shall include a requirement that the landowner obtain all permits necessary to commence the project. The board or council may, at the request of the landowner, amend a tentatively approved specified alternative use if it finds that the amendment is consistent with the findings made pursuant to subdivision (a) of Section 51282.

(b) The landowner shall notify the board or council when he or she has satisfied the conditions and contingencies enumerated in the certificate of tentative cancellation. Within 30 days of receipt of the notice, and upon a determination that the conditions and contingencies have been satisfied, the board or council shall execute a certificate of cancellation of contract, cause the the certificate to be recorded, and send a copy to the Director of Conservation.

(c) If the landowner has been unable to satisfy the conditions and contingencies enumerated in the certificate of tentative cancellation, the landowner shall notify the board or council of the particular conditions or contingencies he or she is unable to satisfy. Within 30 days of receipt of the notice, and upon a determination that the landowner is unable to satisfy the conditions and contingencies listed, the board or council shall execute a certificate of withdrawal of tentative approval of a cancellation of contract and cause the same to be recorded. However, the landowner shall not be entitled to the refund of any cancellation fee paid.

SEC. 5. Section 51283.5 is added to the Government Code, to read:

51283.5. (a) The Legislature finds and declares that cancellation fees should be calculated in a timely manner and disputes over cancellation fees should be resolved before a city or county approves a tentative cancellation. However, the city or county may approve a tentative cancellation notwithstanding an assessor's formal review or judicial challenge to the cancellation value or fee.

(b) If the valuation changes after the approval or a tentative cancellation, the certificate of tentative cancellation shall be amended to reflect the correct valuation and cancellation fee.

(c) If the landowner wishes to pay a cancellation fee when a formal review or an independent appraisal has been requested, he or she may pay the fee required in the current certificate of cancellation and provide security determined to be adequate by the Department of Conservation

for 20 percent of the cancellation fee based on the assessor's valuation. The board or council shall hold the security and release it immediately upon full payment of the cancellation fee determined pursuant to Section 51203.

(d) The city or county may approve a final cancellation notwithstanding a pending formal review or judicial challenge to the cancellation valuation or fee. The certificate of final cancellation shall include the following statements:

(1) That formal review or judicial challenge of the cancellation valuation or fee is pending.

(2) That the fee may be adjusted, based upon the outcome of the review or challenge.

(3) The identity of the party who will be responsible for paying any additional fee or will receive any refund.

(4) The form and amount of security provided by the landowner or other responsible party and approved by the Department of Conservation.

(e) Upon resolution, the landowner or the party identified in the certificate shall either pay the balance owed to the county treasurer, or receive from the county treasurer or the controller any amount of overpayment, and shall also be entitled to the immediate release of any security.

(f) (1) If a party does not receive the notice required pursuant to Section 51203, 51283, 51283.4, or 51284, a judicial challenge to the cancellation valuation may be filed within three years of the latest of the applicable following events:

(A) The board or council certification of the fee pursuant to subdivision (b) of Section 51283, or for fees recomputed pursuant to Section 51283.4, the execution of a certificate of cancellation under that section.

(B) The date of the assessor's determination pursuant to paragraph (3) of subdivision (b) of Section 51203.

(C) The service of notice to the Director of Conservation of the board or council's recorded certificate of final cancellation.

(2) If a party did receive the required notice pursuant to Section 51203, 51283, 51283.4, or 51284, a judicial challenge to the cancellation valuation may be filed only after the party has exhausted his or her administrative remedies through the formal review process specified in Section 51203, and only within 180 days of the latest of the applicable following events:

(A) The board or council certification of the fee pursuant to subdivision (b) of Section 51283 or for fees recomputed pursuant to Section 51283.4, the execution of a certificate of cancellation under that section.

(B) The date of the assessor's determination pursuant to paragraph (3) of subdivision (b) of Section 51203.

(C) The service of notice to the Director of Conservation or the board or council's recorded certificate of final cancellation.

SEC. 6. Section 51284.1 of the Government Code is amended to read:

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

(1) A copy of the petition.

(2) A copy of the contract.

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

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

(b) The board or council shall send that information to the assessor that is necessary to describe the land subject to the proposed cancellation. The information shall include the name and address of the landowner petitioning the cancellation.

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

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

(e) The board or council may include the cancellation valuation, if available, of the land as part of the completed petition sent to the director.

CHAPTER 795

An act to amend Section 217 of, and to add and repeal Sections 217.7, 217.8, and 217.9 of, the Streets and Highways Code, relating to highways.

[Approved by Governor September 27, 2004. Filed with Secretary of State September 27, 2004.]

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

SECTION 1. Section 217 of the Streets and Highways Code is amended to read:

217. The following definitions apply for the purposes of this article:

(a) ''Design'' is a plan completed to a level of 30 percent.

(b) ''Design-sequencing'' is a method of contracting that enables the sequencing of design activities to permit each construction phase to commence when design for that phase is complete, instead of requiring design for the entire project to be completed before commencing construction.

(c) A ''design-sequencing contract'' is a contract between the department and a contractor that requires the department to prepare a design and permits construction of a project to commence upon completion of design for a construction phase.

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

SEC. 2. Section 217.7 is added to the Streets and Highways Code, to read:

217.7. (a) Notwithstanding Chapter 1 (commencing with Section 10100) of Part 2 of Division 2 of the Public Contract Code, except Section 10128 of that code, and Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code, the department may conduct a phase two pilot program to let design-sequencing contracts for the design and construction of not more than 12 transportation projects, to be selected based on criteria established by the director. For the purpose of this article, these projects shall be deemed public works.

(b) In selecting projects for the pilot program authorized under subdivision (a), the director shall attempt to balance geographical areas among test projects as well as pursue diversity in the types of projects undertaken. In this process, the director shall consider selecting projects that improve interregional and intercounty routes.

(c) To the extent available, the department shall seek to incorporate existing knowledge and experience on design-sequencing contracts in carrying out its responsibilities under subdivision (a).

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

SEC. 3. Section 217.8 is added to the Streets and Highways Code, to read:

217.8. (a) Not later than July 1, 2006, and July 1 of each subsequent year during which a contract under the phase two pilot program, as

described in Section 217.7, is in effect, the department shall prepare a status report on its contracting methods, procedures, costs, and delivery schedules. Upon completion of all design-sequencing contracts, but in no event later than January 1, 2010, the department shall establish a peer review committee or continue in existence the peer review committee created pursuant to former Section 217.4, which was added by Chapter 378 of the Statutes of 1999, and direct that committee to prepare a report for submittal to the Legislature that describes and evaluates the outcome of the contracts provided for in Section 217.7, stating the positive and negative aspects of using design-sequencing as a contracting method.

(b) 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. 4. Section 217.9 is added to the Streets and Highways Code, to read:

217.9. Design-sequencing contracts under the phase two pilot program, as described in Section 217.7, shall be awarded in accordance with all of the following:

(a) The department shall advertise design-sequencing projects by special public notice to contractors.

(b) Contractors shall be required to provide prequalification information establishing appropriate licensure and successful past experience with the proposed work.

(c) 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.

CHAPTER 796

An act to amend Sections 8574.1, 8574.7, 8574.8, 8574.10, 8670.3, 8670.5, 8670.7, 8670.8, 8670.8.5, 8670.9, 8670.10, 8670.13, 8670.13.2, 8670.14, 8670.18, 8670.19, 8670.21, 8670.23, 8670.23.1, 8670.24, 8670.25.5, 8670.26, 8670.27, 8670.28, 8670.29, 8670.31, 8670.35, 8670.36.1, 8670.37.5, 8670.41, 8670.48, 8670.50, 8670.56.5, 8670.56.6, 8670.61.5, 8670.71, and 8670.72 of, to add Section 8670.73 to, and to repeal Sections 8670.36.5 and 8670.52 of, the Government Code, to amend Sections 449.3 and 449.5 of the Harbors and Navigation Code, to amend Section 8750 of the Public Resources Code, to amend Sections 46016, 46018, and 46027 of the Revenue and Taxation Code, and to amend Section 13272 of the Water Code, relating to oil spills.

[Approved by Governor September 27, 2004. Filed with Secretary of State September 27, 2004.]

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

SECTION 1. Section 8574.1 of the Government Code is amended to read:

8574.1. In addition to any other authority conferred upon the Governor by this chapter, the Governor shall establish a California oil spill contingency plan pursuant to this article.

SEC. 2. Section 8574.7 of the Government Code is amended to read:

8574.7. The Governor shall require the administrator, in consultation with the State Interagency Oil Spill Committee and not in conflict with the National Contingency Plan, to amend the California oil spill contingency plan by adding a marine oil spill contingency planning section which provides for the best achievable protection of the coast and marine waters. The marine oil spill contingency planning section shall consist of all of the following elements:

(a) A state marine response element that specifies the hierarchy for state and local agency response to an oil spill. The element shall define the necessary tasks for oversight and control of cleanup and removal activities associated with a marine oil spill and shall specify each agency's particular responsibility in carrying out these tasks. The element shall also include an organizational chart of the state marine oil spill response organization and a definition of the resources, capabilities, and response assignments of each agency involved in cleanup and removal actions in a marine oil spill.

(b) A regional and local planning element which shall provide the framework for the involvement of regional and local agencies in the state effort to respond to a marine oil spill, and shall ensure the effective and efficient use of regional and local resources in all of the following:

(1) Traffic and crowd control.

(2) Firefighting.

(3) Boating traffic control.

(4) Radio and communications control and provision of access to equipment.

(5) Identification and use of available local and regional equipment or other resources suitable for use in cleanup and removal actions.

(6) Identification of private and volunteer resources or personnel with special or unique capabilities relating to marine oil spill cleanup and removal actions.

(7) Provision of medical emergency services.

(c) A coastal protection element which establishes the state standards for coastline protection. The administrator, in consultation with the State Interagency Oil Spill Committee, the Coast Guard and Navy, and the shipping industry, shall develop criteria for coastline protection. If appropriate, the administrator shall consult with representatives from

the States of Alaska, Washington, and Oregon, the Province of British Columbia in Canada, and the Republic of Mexico. The criteria shall designate at least all of the following:

(1) Appropriate shipping lanes and navigational aids for tankers, barges, and other commercial vessels to reduce the likelihood of collisions between tankers, barges, and other commercial vessels. Designated shipping lanes shall be located off the coastline at a distance sufficient to significantly reduce the likelihood that disabled vessels will run aground along the coast of the state.

(2) Ship position reporting and communications requirements.

(3) Required predeployment of protective equipment for sensitive environmental areas along the coastline.

(4) Required emergency response vessels which are capable of preventing disabled tankers from running aground.

(5) Required emergency response vessels which are capable of commencing oil cleanup operations before spilled oil can reach the shoreline.

(6) An expedited decisionmaking process for dispersant use in coastal waters. Prior to adoption of the process, the administrator shall ensure that a comprehensive testing program is carried out for any dispersant proposed for use in California marine waters. The testing program shall evaluate toxicity and effectiveness of the dispersants.

(7) Required rehabilitation facilities for wildlife injured by spilled oil.

(8) An assessment of how activities that usually require a permit from a state or local agency may be expedited or issued by the administrator in the event of an oil spill.

(d) An environmentally and ecologically sensitive areas element which shall require the administrator, in conjunction with appropriate local agencies, to prepare and distribute to facilities and local and state agencies, regional maps depicting environmentally and ecologically sensitive areas in marine waters or along the coast. The maps shall designate those areas which have particularly high priority for protection against oil spills. The administrator shall specify protective requirements to be taken in the event of an oil spill for each environmentally and ecologically sensitive area.

(e) The administrator shall complete the marine oil spill contingency planning section by January 1, 1993. Any recommendations for action that cannot be financed or implemented pursuant to the existing authority of the administrator shall be reported to the Legislature along with recommendations for financing those actions.

(f) ''Administrator,'' for purposes of this section, means the administrator appointed by the Governor pursuant to Section 8670.4.

SEC. 3. Section 8574.8 of the Government Code is amended to read:

8574.8. The administrator shall submit to the Governor and the Legislature the amended California oil spill contingency plan required, pursuant to Section 8574.7, by January 1, 1993. The administrator shall thereafter submit revised plans every three years.

SEC. 4. Section 8574.10 of the Government Code is amended to read:

8574.10. (a) The Review Subcommittee of the State Interagency Oil Spill Committee is hereby established. As used in this chapter, ''review subcommittee'' means the Review Subcommittee of the State Interagency Oil Spill Committee. The Director of Fish and Game, who shall serve as chair of the review subcommittee, the Executive Officer of the State Lands Commission, the Executive Director of the California Coastal Commission, the State Fire Marshal, the State Oil and Gas Supervisor, the Executive Director of the State Water Resources Control Board, and the Executive Director of the San Francisco Bay Conservation and Development Commission, or their designees, shall constitute the members of the review subcommittee. The representative of the San Francisco Bay Conservation and Development Commission only shall have voting and decisionmaking authority regarding matters under the jurisdiction of the commission. The administrator may serve as the designee of the Director of Fish and Game.

(b) All regulations and guidelines adopted pursuant to Chapter 7.4 (commencing with Section 8670.1) and Division 7.8 (commencing with Section 8750) of the Public Resources Code, and amendments to the California oil spill contingency plan, shall, prior to adoption, be submitted to the review subcommittee for review and comment.

(c) Within 60 days from the date of receipt of regulations, guidelines, or amendments pursuant to subdivision (a), the review subcommittee shall review and submit comments to the submitting agency. Any recommendation of the review subcommittee shall be based on the standards of the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, consisting of the provisions specified in Section 8670.1. This comment period may overlap any other comment periods required by law or allowed by the administrator.

(d) The comments and recommendations of the review subcommittee shall not be binding on the submitting agency. Prior to adoption, and within 30 days from the date of receipt of a response from the review subcommittee, the submitting agency shall respond in writing to the review subcommittee concerning all of the findings and recommendations of the review subcommittee. The submitting agency may reject the recommendations of the review subcommittee only if the submitting agency determines that the action it chooses more effectively furthers the purposes of, and more effectively complies with, the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act.

Whenever the submitting agency departs from a finding or recommendation of the review subcommittee, the written response of the submitting agency shall state its rationale for concluding that its action more effectively furthers the purposes of, and more effectively complies with, that act. Any public hearing that is required by this chapter or any other statute shall be held after the submitting agency has filed a response to the review subcommittee.

SEC. 5. Section 8670.3 of the Government Code is amended to read:

8670.3. Unless the context requires otherwise, the following definitions shall govern the construction of this chapter:

(a) ''Administrator'' means the administrator for oil spill response appointed by the Governor pursuant to Section 8670.4.

(b) (1) ''Best achievable protection'' means the highest level of protection that can be achieved through both the use of the best achievable technology and those manpower levels, training procedures, and operational methods that provide the greatest degree of protection achievable. The administrator's determination of which measures provide the best achievable protection shall be guided by the critical need to protect valuable coastal resources and marine waters, while also considering all of the following:

(A) The protection provided by the measure.

(B) The technological achievability of the measure.

(C) The cost of the measure.

(2) The administrator shall not use a cost-benefit or cost-effectiveness analysis or any particular method of analysis in determining which measures provide the best achievable protection. The administrator shall instead, when determining which measures provide best achievable protection, give reasonable consideration to the protection provided by the measures, the technological achievability of the measures, and the cost of the measures when establishing the requirements to provide the best achievable protection for coastal and marine resources.

(c) (1) ''Best achievable technology'' means that technology that provides the greatest degree of protection, taking into consideration both of the following:

(A) Processes that are being developed, or could feasibly be developed anywhere in the world, given overall reasonable expenditures on research and development.

(B) Processes that are currently in use anywhere in the world.

(2) In determining what is the best achievable technology pursuant to this chapter, the administrator shall consider the effectiveness and engineering feasibility of the technology.

(d) ''Dedicated response resources'' means equipment and personnel committed solely to oil spill response, containment, and cleanup that are not used for any other activity that would adversely affect the ability of

that equipment and personnel to provide oil spill response services in the timeframes for which the equipment and personnel are rated.

(e) ''Environmentally sensitive area'' means an area defined pursuant to the applicable area contingency plans, as created and revised by the Coast Guard and the administrator.

(f) ''Local government'' means any chartered or general law city, chartered or general law county, or any city and county.

(g) (1) ''Marine facility'' means any facility of any kind, other than a tank ship or tank barge, that is or was used for the purposes of exploring for, drilling for, producing, storing, handling, transferring, processing, refining, or transporting oil and is located in marine waters, or is located where a discharge could impact marine waters unless the facility is either of the following:

(A) Subject to Chapter 6.67 (commencing with Section 25270) or Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code.

(B) Placed on a farm, nursery, logging site, or construction site and does not exceed 20,000 gallons in a single storage tank.

(2) For the purposes of this chapter, ''marine facility'' includes a drill ship, semisubmersible drilling platform, jack-up type drilling rig, or any other floating or temporary drilling platform.

(3) For the purposes of this chapter, ''marine facility'' does not include a small craft refueling dock.

(h) (1) ''Marine terminal'' means any marine facility used for transferring oil to or from a tank ship or tank barge.

(2) ''Marine terminal'' includes, for purposes of this chapter, all piping not integrally connected to a tank facility, as defined in subdivision (1) of Section 25270.2 of the Health and Safety Code.

(i) ''Marine waters'' means those waters subject to tidal influence, and includes the waterways used for waterborne commercial vessel traffic to the Port of Sacramento and the Port of Stockton.

(j) ''Mobile transfer unit'' means a small marine fueling facility that is a vehicle, truck, or trailer, including all connecting hoses and piping, used for the transferring of oil at a location where a discharge could impact marine waters.

(k) ''Non-dedicated response resources'' means those response resources identified by an Oil Spill Response Organization for oil spill response activities that are not dedicated response resources.

(*l*) ''Nonpersistent oil'' means a petroleum-based oil, such as gasoline, diesel, or jet fuel, that evaporates relatively quickly and is an oil with hydrocarbon fractions, at least 50 percent of which, by volume, distills at a temperature of 645° Fahrenheit, and at least 95 percent of which, by volume, distills at a temperature of 700° Fahrenheit.

(m) ''Nontank vessel'' means a vessel of 300 gross tons or greater that carries oil, but does not carry that oil as cargo.

(n) ''Oil'' means any kind of petroleum, liquid hydrocarbons, or petroleum products or any fraction or residues therefrom, including, but not limited to, crude oil, bunker fuel, gasoline, diesel fuel, aviation fuel, oil sludge, oil refuse, oil mixed with waste, and liquid distillates from unprocessed natural gas.

(o) ''Oil spill cleanup agent'' means a chemical, or any other substance, used for removing, dispersing, or otherwise cleaning up oil or any residual products of petroleum in, or on, any of the waters of the state.

(p) ''Oil spill contingency plan'' or ''contingency plan'' means the oil spill contingency plan required pursuant to Article 5 (commencing with Section 8670.28).

(q) (1) ''Oil Spill Response Organization'' or ''OSRO'' means an individual, organization, association, cooperative, or other entity that provides, or intends to provide, equipment, personnel, supplies, or other services directly related to oil spill containment, cleanup, or removal activities.

(2) A ''rated OSRO'' means an OSRO that has received a satisfactory rating from the administrator for a particular rating level established pursuant to Section 8670.30.

(3) ''OSRO'' does not include an owner or operator with an oil spill contingency plan approved by the administrator or an entity that only provides spill management services, or who provides services or equipment that are only ancillary to containment, cleanup, or removal activities.

(r) ''Onshore facility'' means any facility of any kind which is located entirely on lands not covered by marine waters.

(s) (1) ''Owner'' or ''operator'' means any of the following:

(A) In the case of a vessel, any person who owns, has an ownership interest in, operates, charters by demise, or leases, the vessel.

(B) In the case of a marine facility, any person who owns, has an ownership interest in, or operates the marine facility.

(C) Except as provided in subparagraph (D), in the case of any vessel or marine facility, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to an entity of state or local government, any person who owned, held an ownership interest in, operated, or otherwise controlled activities concerning the vessel or marine facility immediately beforehand.

(D) An entity of the state or local government that acquired ownership or control of a vessel or marine facility, when the entity of the state or local government has caused or contributed to a spill or discharge of oil into marine waters.

(2) ''Owner'' or ''operator'' does not include a person who, without participating in the management of a vessel or marine facility, holds indicia of ownership primarily to protect his or her security interest in the vessel or marine facility.

(3) ''Operator'' does not include any person who owns the land underlying a marine facility or the facility itself if the person is not involved in the operations of the facility.

(t) ''Person'' means any individual, trust, firm, joint stock company, or corporation, including, but not limited to, a government corporation, partnership, and association. ''Person'' also includes any city, county, city and county, district, and the state or any department or agency thereof, and the federal government, or any department or agency thereof, to the extent permitted by law.

(u) ''Pipeline'' means any pipeline used at any time to transport oil.

(v) ''Reasonable worst case spill'' means, for the purposes of preparing contingency plans for a nontank vessel, the total volume of the largest fuel tank on the nontank vessel.

(w) ''Responsible party'' or ''party responsible'' means any of the following:

(1) The owner or transporter of oil or a person or entity accepting responsibility for the oil.

(2) The owner, operator, or lessee of, or person who charters by demise, any vessel or marine facility, or a person or entity accepting responsibility for the vessel or marine facility.

(x) ''Small craft'' means any vessel, other than a tank ship or tank barge, that is less than 20 meters in length.

(y) ''Small craft refueling dock'' means a waterside operation that dispenses only nonpersistent oil in bulk and small amounts of persistent lubrication oil in containers primarily to small craft and meets both of the following criteria:

(1) Has tank storage capacity not exceeding 20,000 gallons in any single storage tank or tank compartment.

(2) Has total usable tank storage capacity not exceeding 75,000 gallons.

(z) ''Small marine fueling facility'' means either of the following:

(1) A mobile transfer unit.

(2) A fixed facility that is not a marine terminal, that dispenses primarily nonpersistent oil, that may dispense small amounts of persistent oil, primarily to small craft, and that meets all of the following criteria:

(A) Has tank storage capacity not exceeding 40,000 gallons in any single storage tank or storage tank compartment.

(B) Has total usable tank storage capacity not exceeding 75,000 gallons.

(C) Had an annual throughput volume of over-the-water transfers of oil that did not exceed 3,000,000 gallons during the most recent preceding 12-month period.

(aa) ''Spill'' or ''discharge'' means any release of at least one barrel (42 gallons) of oil into marine waters that is not authorized by any federal, state, or local government entity.

(bb) ''State Interagency Oil Spill Committee'' means the committee established pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7.

(cc) ''California oil spill contingency plan'' means the California oil spill contingency plan prepared pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7.

(dd) ''Tank barge'' means any vessel that carries oil in commercial quantities as cargo but is not equipped with a means of self-propulsion.

(ee) ''Tank ship'' means any self-propelled vessel that is constructed or adapted for the carriage of oil in bulk or in commercial quantities as cargo.

(ff) ''Tank vessel'' means a tank ship or tank barge.

(gg) ''Vessel'' means any watercraft or ship of any kind, including every structure adapted to be navigated from place to place for the transportation of merchandise or persons.

(hh) ''Vessel carrying oil as secondary cargo'' means any vessel that does not carry oil as a primary cargo, but does carry oil in bulk as cargo or cargo residue.

SEC. 6. Section 8670.5 of the Government Code is amended to read:

8670.5. The Governor shall ensure that the state fully and adequately responds to all oil spills in marine waters. The administrator, acting at the direction of the Governor, shall implement activities relating to oil spill response, including drills and preparedness and oil spill containment and cleanup. The administrator shall also represent the state in any coordinated response efforts with the federal government.

SEC. 7. Section 8670.7 of the Government Code is amended to read:

8670.7. (a) The administrator, subject to the Governor, has the primary authority to direct prevention, removal, abatement, response, containment, and cleanup efforts with regard to all aspects of any oil spill in the marine waters of the state, in accordance with any applicable marine facility or vessel contingency plan and the California oil spill contingency plan. The administrator shall cooperate with any federal on-scene coordinator, as specified in the National Contingency Plan.

(b) The administrator shall implement the California oil spill contingency plan, required pursuant to Section 8574.1, to the fullest extent possible.

(c) The administrator shall do both of the following:

(1) Be present at the location of any oil spill of more than 100,000 gallons in marine waters, as soon as possible after notice of the discharge.

(2) Ensure that persons trained in oil spill response and cleanup, whether employed by the responsible party, the state, or another private or public person or entity, are onsite to respond to, contain, and clean up any oil spill in marine waters, as soon as possible after notice of the discharge.

(d) Throughout the response and cleanup process, the administrator shall apprise the members of the State Interagency Oil Spill Committee, the air quality management district or air pollution control district having jurisdiction over the area in which the oil spill occurred, and the local government entities that are affected by the spill.

(e) The administrator, with the assistance of the State Fire Marshal, the State Lands Commission, and the federal on-scene coordinator, shall determine the cause and amount of the discharge.

(f) The administrator shall have the state authority over the use of all response methods, including, but not limited to, in situ burning, dispersants, and any oil spill cleanup agents in connection with an oil discharge. The administrator shall consult with the federal onscene coordinator prior to exercising authority under this subdivision.

(g) (1) The administrator shall conduct workshops, consistent with the intent of this chapter, with the participation of appropriate local, state, and federal agencies, including the State Air Resources Board, air pollution control districts, and air quality management districts, and affected private organizations, on the subject of oil spill response technologies, including in situ burning. The workshops shall review the latest research and findings regarding the efficacy and toxicity of oil spill cleanup agents and other technologies, their potential public health and safety and environmental impacts, and any other relevant factors concerning their use in oil spill response. In conducting these workshops, the administrator shall solicit the views of all participating parties concerning the use of these technologies, with particular attention to any special considerations that apply to coastal areas and marine waters of the state.

(2) The administrator shall publish guidelines and conduct periodic reviews of the policies, procedures, and parameters for the use of in situ burning, which may be implemented in the event of an oil spill.

(h) (1) The administrator shall ensure that, as part of the response to any significant spill, biologists or other personnel are present and provided any support and funding necessary and appropriate for the assessment of damages to natural resources and for the collection of data and other evidence that may help in determining and recovering damages.

(2) (A) The administrator shall coordinate all actions required by state or local agencies to assess injury to, and provide full mitigation for injury to, or to restore, rehabilitate, or replace, natural resources, including wildlife, fisheries, wildlife or fisheries habitat, and beaches and other coastal areas, that are damaged by an oil spill. For purposes of this subparagraph, ''actions required by state or local agencies'' include, but are not limited to, actions required by state trustees under Section 1006 of the Oil Pollution Act of 1990 (33 U.S.C. Sec. 2706) and actions required pursuant to Section 8670.61.5.

(B) The responsible party shall be liable for all coordination costs incurred by the administrator.

(3) Nothing in this subdivision shall be construed to give the administrator any authority to administer state or local laws or to limit the authority of another state or local agency to implement and enforce state or local laws under its jurisdiction, nor does this subdivision limit the authority or duties of the administrator under this chapter or limit the authority of an agency to enforce existing permits or permit conditions.

(i) (1) The administrator shall enter into a memorandum of understanding with the executive director of the State Water Resources Control Board, acting for the State Water Resources Control Board and the California regional water quality control boards, and with the approval of the State Water Resources Control Board, to address discharges, other than dispersants, that are incidental to, or directly associated with, the response, containment, and cleanup of an existing or threatened oil spill conducted pursuant to this chapter.

(2) The memorandum of understanding entered into pursuant to paragraph (1) shall address any permits, requirements, or authorizations that are required for the specified discharges. The memorandum of understanding shall be consistent with requirements that protect state water quality and beneficial uses and with any applicable provisions of the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code) or the federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.), and shall expedite efficient oil spill response.

SEC. 8. Section 8670.8 of the Government Code is amended to read:

8670.8. (a) The administrator shall carry out programs to provide training for individuals in response, containment, and cleanup operations and equipment, equipment deployment, and the planning and management of these programs. These programs may include training for members of the California Conservation Corps, other response personnel employed by the state, personnel employed by other public entities, personnel from marine facilities, commercial fishermen and other mariners, and interested members of the public. Training may be offered for volunteers.

(b) The administrator may offer training to anyone who is required to take part in response and cleanup efforts under the California oil spill contingency plan or under local governmental contingency plans prepared and approved under this chapter.

(c) Funding for activities undertaken pursuant to subdivisions (a) and (b) shall be from the Oil Spill Prevention and Administration Fund created pursuant to Section 8670.38.

(d) All training provided by the administrator shall follow the requirements of applicable federal and state occupational safety and health standards adopted by the Occupational Safety and Health Administration of the Department of Labor and the California Occupational, Safety, and Health Standards Board.

SEC. 9. Section 8670.8.5 of the Government Code is amended to read:

8670.8.5. The administrator may use volunteer workers in response, containment, restoration, wildlife rehabilitation, and cleanup efforts for oil spills in marine waters. The volunteers shall be deemed employees of the state for the purpose of workers' compensation under Article 2 (commencing with Section 3350) of Chapter 2 of Part 1 of Division 4 of the Labor Code. Any payments for workers' compensation pursuant to this section shall be made from the Oil Spill Response Trust Fund created pursuant to Section 8670.46.

SEC. 10. Section 8670.9 of the Government Code is amended to read:

8670.9. (a) The administrator shall enter into discussions on behalf of the state with the States of Alaska, Hawaii, Oregon, and Washington, for the purpose of developing interstate agreements regarding oil spill prevention and response. The agreements shall address, including, but not limited to, all of the following:

(1) Coordination of vessel safety and traffic.

(2) Spill prevention equipment and response required on tank ships and tank barges and at terminals.

(3) The availability of oil spill response and cleanup equipment and personnel.

(4) Other matters that may relate to the transport of oil and oil spill prevention, response, and cleanup.

(b) The administrator shall coordinate the development of these agreements with the Coast Guard, the Province of British Columbia in Canada, and the Republic of Mexico.

SEC. 11. Section 8670.10 of the Government Code is amended to read:

8670.10. (a) In coordination with all appropriate federal, state, and local government entities, the administrator shall periodically carry out announced and unannounced drills to test response and cleanup

operations, equipment, contingency plans, and procedures implemented under this chapter. If practical, the administrator shall coordinate drills with drills carried out by the State Lands Commission and the California Coastal Commission to test prevention operations, equipment, and procedures. In carrying out announced drills, the administrator shall coordinate with the private entities involved in the drill. Each state and local entity, each rated OSRO, and each operator shall cooperate with the administrator in carrying out these drills.

(b) The administrator shall establish performance standards that each operator and rated OSRO shall meet during the drills carried out pursuant to subdivision (a). The standards shall include, but are not limited to, a standard for the time allowable for adequate response, and shall also specify conditions for canceling a drill because of hazardous or other operational circumstances that may exist. The standards shall specify the protections that the administrator determines are necessary for any environmentally sensitive area, as defined by the administrator.

(c) The costs incurred by an operator to comply with this section and regulations adopted pursuant to this section are the responsibility of the operator. All costs incurred by a local, state, or federal agency in conjunction with participation in a drill pursuant to this chapter shall be borne by each respective agency.

(d) After every drill attended by the administrator or his or her representative, that person shall issue a report that evaluates the performance of the participants.

SEC. 12. Section 8670.13 of the Government Code is amended to read:

8670.13. The administrator shall periodically evaluate the feasibility of requiring new technologies to aid prevention, response, containment, cleanup and wildlife rehabilitation.

SEC. 13. Section 8670.13.2 of the Government Code is amended to read:

8670.13.2. The administrator shall prepare and periodically revise regulations regarding licensing of oil spill cleanup agents. The authority of the administrator shall be substituted for the authority of the State Water Resources Control Board and cross references shall be corrected. The administrator shall submit these regulations to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations. These regulations are exempt from the Administrative Procedure Act. The regulations shall become effective upon filing.

SEC. 14. Section 8670.14 of the Government Code is amended to read:

8670.14. The administrator shall coordinate the oil spill prevention and response programs and marine facility, tank vessel, and nontank

vessel safety standards of the state with federal programs to the maximum extent possible.

SEC. 15. Section 8670.18 of the Government Code is amended to read:

8670.18. (a) The administrator may inspect or cause to be inspected on a regular basis all vessels.

(b) The administrator shall evaluate and periodically review the adequacy of the vessel inspection programs conducted by the Coast Guard and any other federal, state, or local agency. The evaluation shall consider all of the following:

(1) The frequency and scope of inspections.

(2) The continuing commitment of the Coast Guard to conduct frequent vessel inspections.

(3) Any new or pending federal legislation that is likely to change the Coast Guard's inspection programs.

(4) Whether it is desirable for the state to contract with the Coast Guard for more frequent or expanded vessel inspections.

(5) Whether it is desirable and practical for the state to develop and implement a state vessel inspection program.

(c) If the administrator determines in the report that the Coast Guard inspection program is inadequate, the administrator shall attempt to enter into an agreement with the Coast Guard to remedy the deficiencies.

(d) If, within a reasonable time, the administrator cannot remedy deficiencies in the Coast Guard inspection programs, the administrator shall report to the Legislature concerning the steps the administrator is taking to ensure that an adequate vessel inspection program is in place. The administrator shall adopt regulations for any vessel inspection program established pursuant to this section. Vessel inspections authorized pursuant to this section shall be conducted only for the purposes of determining compliance with relevant federal law and the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, as defined in Section 8670.1. The administrator shall consult with the Coast Guard regarding state-mandated requirements for vessel inspections.

(e) Any state vessel inspection program established pursuant to this section shall not duplicate the activities of the Coast Guard or other authorized federal agencies. The administrator shall maintain a record of these activities for each vessel inspected. Any violation of Coast Guard regulations shall immediately be reported to the Coast Guard.

SEC. 16. Section 8670.19 of the Government Code is amended to read:

8670.19. (a) The administrator shall periodically conduct a comprehensive review of all oil spill contingency plans. The administrator shall do both of the following:

(1) Segment the coast into appropriate areas as necessary.

(2) Evaluate the oil spill contingency plans for each area to determine if deficiencies exist in equipment, personnel, training, and any other area determined to be necessary, including those response resources properly authorized for cascading into the area, to ensure the best achievable protection of the coastline, set forth in the California oil spill contingency plan, including the marine oil spill contingency planning section.

(b) If the administrator finds that deficiencies exist, the administrator shall, by the process set forth in Section 8670.31, remand any oil spill contingency plans to the originating party with recommendations for amendments necessary to ensure that the coastline is protected.

SEC. 17. Section 8670.21 of the Government Code is amended to read:

8670.21. (a) As used in this section, the following terms have the following meanings:

(1) ''Vessels'' means vessels as defined in Section 21 of the Harbors and Navigation Code.

(2) ''VTS system'' means a vessel traffic service system.

(b) The administrator shall negotiate an agreement with the Coast Guard, appropriate port agencies, or appropriate organizations, for a VTS system to protect the harbors of this state. The administrator may include in the agreement provisions for vessel traffic monitoring and communications systems for areas of the coast outside of harbors, or negotiate a separate agreement for that purpose. The purpose of a VTS system and a vessel traffic monitoring and communications system shall be to aid navigation by providing satellite tracking, radar, or other information regarding ship locations and traffic, to prevent collisions and groundings.

(c) A plan developed by the administrator, in consultation with the Coast Guard, shall provide for implementing and maintaining VTS systems pursuant to subdivision (b) for the Ports of Los Angeles and Long Beach, the Harbors of San Francisco, the Santa Barbara Channel, and any other area where establishing a VTS system or a vessel monitoring and communications system is recommended by the Coast Guard. The plan shall provide for the areas described in this subdivision, and for any other system and areas that are recommended by the Coast Guard, or recommended by the administrator and approved by the Coast Guard. Only systems that will be operated by the Coast Guard, or that will have direct communication with a Coast Guard officer who has Captain of the Port enforcement authority, shall be included in the plan. The plan shall be amended periodically to reflect any changes in Coast Guard recommendations or operations, and any changes in the agreements entered into pursuant to subdivision (b). The plan shall, to

the extent allowable given federal requirements, provide for the best achievable protection.

(d) (1) The administrator shall attempt to provide funding for VTS systems and vessel monitoring and communications systems through voluntary funding, or services in kind, provided by the maritime industry. If agreement on voluntary funding or services in kind cannot be reached, the administrator may establish a fee system that reflects the commercial maritime activity of each of the respective harbors or areas for which a VTS system or a vessel monitoring and communications system is established. Using that fee system, the administrator shall fund VTS systems and vessel monitoring and communications systems.

(2) The money collected pursuant to this subdivision shall be deposited in the Vessel Safety Account, which is hereby created in the Oil Spill Prevention and Administration Fund. The money in the Vessel Safety Account is hereby continuously appropriated for the sole purpose of funding VTS systems and vessel monitoring and communications systems. Other than the fees imposed pursuant to this subdivision that are deposited in the Vessel Safety Account, no funds from the Oil Spill Prevention and Administration Fund may be used to pay for VTS systems or vessel traffic monitoring and communications systems.

(3) The administrator shall adopt regulations to implement this subdivision. The administrator may adopt regulations prohibiting tank barges and tank ships from accepting or unloading oil at marine terminals if a tank barge or tank ship is not in compliance with required VTS system or vessel traffic monitoring and communications system equipment.

(e) If a VTS system covers waters outside the jurisdiction of a local port authority, the administrator may grant the money that is determined to be necessary for the purchase and installation of equipment required for the establishment or expansion of the VTS system. Those grants may be made from the Oil Spill Response Trust Fund in accordance with Section 8670.49, as individual and nonrecurring appropriations through the budget process, but shall not exceed the amount of interest earned from money in that fund.

(f) (1) The Marine Exchange of Los Angeles-Long Beach Harbor, Inc., a corporation organized under the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code), may operate a VTS system in the VTS area described in Section 445 of the Harbors and Navigation Code if the VTS system is approved by the Coast Guard and certified by the administrator as meeting the requirements of this chapter. The marine exchange shall cooperate fully with the administrator in the development, implementation, and operation of that VTS system. Upon certification by the administrator that the Coast Guard has commenced

operation of a fully federally funded VTS system for the VTS area, the authorization for the marine exchange to operate a VTS system shall terminate.

(2) The Port of Los Angeles and the Port of Long Beach may impose fees upon all covered vessels, as defined in Section 445.5 of the Harbors and Navigation Code, for the funding of the VTS system operated by the marine exchange.

(3) No vessel that is required to comply with Article 4 (commencing with Section 445) of Chapter 1 of Division 3 of the Harbors and Navigation Code shall assert any claim against the marine exchange or any officer, director, employee, or representative of the marine exchange for any damage, loss, or expense, including any rights of indemnity or other rights of any kind, sustained by that vessel or its owners, agents, charterers, operators, crew, or third parties arising out of, or connected with, directly or indirectly, the marine exchange's operation of the vessel traffic service, even though resulting in whole or in part from the negligent acts or omissions of the marine exchange or of an officer, director, employee, or representative of the marine exchange.

(4) Each vessel required to comply with Article 4 (commencing with Section 445) of Chapter 1 of Division 3 of the Harbors and Navigation Code shall defend, indemnify, and hold harmless the marine exchange and its officers, directors, employees, and representatives from any and all claims, suits, or actions of any nature by whomsoever asserted, even though resulting or alleged to have resulted from negligent acts or omissions of the marine exchange or of an officer, director, employee, or representative of the marine exchange.

(5) Nothing in this subdivision affects any liability or rights that may arise by reason of the gross negligence or intentional or willful misconduct of the marine exchange or of an officer, director, employee, or representative of the marine exchange in the operation of the VTS system, including any liability pursuant to subdivision (c) of Section 449.5 of the Harbors and Navigation Code.

(6) The marine exchange and its officers and directors are subject to Section 5047.5 of the Corporations Code to the extent that the marine exchange meets the criteria specified in that section.

(7) Nothing in this section shall be deemed to include the marine exchange or its officers, directors, employees, or representatives within the definition of ''responsible party'' pursuant to Section 8670.3 for purposes of this chapter.

(8) Upon request by the administrator, the marine exchange shall submit a report containing a complete description of the VTS system operated by the marine exchange. Upon receiving the report, the administrator shall determine, after a public hearing, whether the elements and operation of the VTS system are consistent with the Harbor

Safety Plan for the Ports of Los Angeles and Long Beach developed pursuant to Section 8670.23.1 and the standards for the statewide vessel traffic service systems plan. If the administrator determines that the VTS system is inconsistent with the Harbor Safety Plan for the Ports of Los Angeles and Long Beach developed pursuant to Section 8670.23.1 or with the statewide vessel traffic service systems plan, the administrator shall issue an order to the marine exchange specifying modifications to the VTS system to eliminate the inconsistencies. If the marine exchange has not complied with that order within six months of issuance, the administrator may, in addition to, or in lieu of, any other enforcement action authorized by this chapter or Article 4 (commencing with Section 445) of Chapter 1 of Division 3 of the Harbors and Navigation Code, and after a public hearing, administratively revoke the authorization for the marine exchange to operate a VTS system. If authorization for the marine exchange to operate a VTS system is revoked, the administrator shall take any action necessary to expeditiously establish a VTS system for the VTS area described in Section 445 of the Harbors and Navigation Code. The action may include the assessment of fees on vessels, port users, and ports, and needed expenditures, as provided in subdivision (d).

(g) It is the intent of the Legislature that VTS systems and vessel traffic monitoring and communications systems be completed and operated by the Coast Guard, except that, with respect to the VTS area described in Section 445 of the Harbors and Navigation Code, a VTS system may be operated by the Marine Exchange of Los Angeles-Long Beach, Inc., pursuant to subdivision (f).

SEC. 18. Section 8670.23 of the Government Code is amended to read:

8670.23. (a) The administrator shall establish Harbor Safety Committees for harbors and adjacent regions of San Diego; Los Angeles/Long Beach; Port Hueneme; San Francisco; and Humboldt Bay.

(b) The administrator shall determine the geographic area for each harbor safety committee.

(c) The administrator shall appoint to each harbor safety committee, for a term of three years, all of the following members, and their alternates:

(1) A designee of a port authority within the harbor.

(2) A representative of tank ship operators.

(3) A representative of the pilot organizations within the harbor.

(4) A representative of dry cargo vessel operators.

(5) A representative of commercial fishing operators.

(6) A representative of a recognized nonprofit environmental organization that has as a purpose the protection of marine resources.

(7) A designee of the California Coastal Commission, except that for the Harbor Safety Committee for San Francisco Bay, the administrator shall appoint a designee of the San Francisco Bay Conservation and Development Commission.

(8) A representative from a recognized labor organization involved with operations of vessels.

(9) A designee of the Captain of the Port from the United States Coast Guard, the United States Army Corps of Engineers, the National Oceanographic and Atmospheric Administration, and the United States Navy to the extent that each consents to participate on the committee.

(10) A representative of tug or tank barge operators, who is not also engaged in the business of operating either tank ships or dry cargo vessels.

(11) A representative of pleasure boat operators.

(12) A harbor safety committee may petition the administrator with a request for a new or additional membership position needed to conduct the harbor safety committee business and that reflects the makeup of the local maritime community. The approval of this petition shall be at the sole discretion of the administrator.

(13) A harbor safety committee may petition the administrator for the elimination of a new or additional membership position requested and approved pursuant to paragraph (12). The approval of this petition shall be at the sole discretion of the administrator.

(d) The members appointed from the categories listed in paragraphs (2), (3), (4), and (10) of subdivision (c) shall have navigational expertise. An individual is considered to have navigational expertise if the individual meets any of the following conditions:

(1) Has held or is presently holding a Coast Guard Merchant Marine Deck Officer's license.

(2) Has held or is presently holding a position on a commercial vessel that includes navigational responsibilities.

(3) Has held or is presently holding a shoreside position with direct operational control of vessels.

(4) Has held or is currently holding a position having responsibilities for permitting or approving the docking of vessels in and around harbor facilities relating to the safe navigation of vessels.

(e) The administrator shall appoint a chairperson and vice chairperson for each harbor safety committee from the membership specified in subdivision (c). The administrator may withdraw such appointments at his or her sole discretion.

(f) Upon request of the harbor safety committee, the administrator may remove a member.

(g) Each member of a harbor safety committee may be reimbursed for actual and necessary expenses incurred in the performance of committee duties.

SEC. 19. Section 8670.23.1 of the Government Code is amended to read:

8670.23.1. (a) Each harbor safety committee established pursuant to Section 8670.23 shall be responsible for planning for the safe navigation and operation of tank ships, tank barges, and other vessels within each harbor. Each committee shall prepare a harbor safety plan, encompassing all vessel traffic within the harbor.

(b) The administrator shall adopt regulations for harbor safety committee membership positions required in addition to those specified in Section 8670.23 and for harbor safety plans in consultation with the committees of those harbors listed in Section 8670.23, and other affected parties. The regulations shall require that the plan contain a discussion of the competitive aspects of the recommendations of the harbor safety committee.

(c) The regulations shall ensure that each harbor safety plan includes all of the following elements:

(1) A recommendation determining when tank vessels are required to be accompanied by a tugboat or tugboats, of sufficient size, horsepower, and pull capability while entering, leaving, or navigating in the harbor. The Harbor Safety Committee for San Francisco shall give the highest priority to the continual review and evaluation of tugboat escort regulations. The administrator shall be guided by the recommendations of the harbor safety committee when adopting regulations pursuant to Section 8670.17.2.

(2) A review and evaluation of the adequacy of, and any changes needed in, all of the following:

(A) Anchorage designations and sounding checks.

(B) Communications systems.

(C) Small vessel congestion in shipping channels.

(D) Placement and effectiveness of navigational aids, channel design plans, and the traffic and routings from port construction and dredging projects.

(3) Procedures for routing vessels during emergencies that impact navigation.

(4) Bridge management requirements.

(5) Suggested mechanisms to ensure that the provisions of the plan are fully and regularly enforced.

(d) Each harbor safety plan shall be submitted to the administrator. The administrator shall review and provide comment on the plan for consistency with the regulations.

(e) The administrator shall, in consultation with the harbor safety committees listed in Section 8670.23, implement the plans. The administrator shall adopt regulations necessary to implement the plans. When federal authority or action is required to implement a plan, the administrator shall petition the appropriate federal agency or the United States Congress, as may be necessary.

(f) On or before July 1 of each year, each harbor safety committee shall revise its respective harbor safety plan and report its findings and recommendations to the administrator.

(g) The administrator may direct a harbor safety committee to address any issue affecting maritime safety or security, as appropriate, and to report findings and recommendations on those issues. The administrator shall forward those findings and recommendations to the appropriate authority.

SEC. 20. Section 8670.24 of the Government Code is amended to read:

8670.24. (a) The administrator shall evaluate all pilotage areas in the state. This evaluation shall include all of the following:

(1) The effectiveness of the state licensing program.

(2) The policies and procedures for investigating pilot incidents by either the Coast Guard or the State Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun.

(3) The feasibility and desirability of applying a surcharge in addition to other fees for pilotage for the purposes of providing expanded pilot training.

(b) The administrator will contact the various pilotage groups, the Coast Guard, and the maritime industry as part of his or her evaluation process.

SEC. 21. Section 8670.25.5 of the Government Code is amended to read:

8670.25.5. (a) Without regard to intent or negligence, any party responsible for the discharge or threatened discharge of oil in marine waters shall report the discharge to the Office of Emergency Services pursuant to Section 25507 of the Health and Safety Code.

(b) Immediately upon receiving notification pursuant to subdivision (a), the Office of Emergency Services shall notify the administrator, the State Lands Commission, the California Coastal Commission, the California regional water quality control board having jurisdiction over the location of the discharged oil, and take the actions required by subdivision (d) of Section 8589.7. If the spill has occurred within the jurisdiction of the San Francisco Bay Conservation and Development Commission, the Office of Emergency Services shall notify that commission. Each public agency specified in this subdivision shall adopt an internal protocol over communications regarding the discharge

of oil and file the internal protocol with the Office of Emergency Services.

(c) The 24-hour emergency telephone number of the Office of Emergency Services shall be posted at every terminal, at the area of control of every marine facility, and on the bridge of every tank ship in marine waters.

(d) This section does not apply to discharges, or potential discharges, of less than one barrel (42 gallons) of oil unless a more restrictive reporting standard is adopted in the California oil spill contingency plan prepared pursuant to Section 8574.1.

(e) Except as otherwise provided in this section and Section 8589.7, a notification made pursuant to this section shall satisfy any immediate notification requirement contained in any permit issued by a permitting agency.

SEC. 21.5. Section 8670.25.5 of the Government Code is amended to read:

8670.25.5. (a) Without regard to intent or negligence, any party responsible for the discharge or threatened discharge of oil in marine waters shall report the discharge immediately to the Office of Emergency Services pursuant to Section 25507 of the Health and Safety Code.

(b) Immediately upon receiving notification pursuant to subdivision (a), the Office of Emergency Services shall notify the administrator, the State Lands Commission, the California Coastal Commission, the California regional water quality control board having jurisdiction over the location of the discharged oil, and take the actions required by subdivision (d) of Section 8589.7. If the spill has occurred within the jurisdiction of the San Francisco Bay Conservation and Development Commission, the Office of Emergency Services shall notify that commission. Each public agency specified in this subdivision shall adopt an internal protocol over communications regarding the discharge of oil and file the internal protocol with the Office of Emergency Services.

(c) The 24-hour emergency telephone number of the Office of Emergency Services shall be posted at every terminal, at the area of control of every marine facility, and on the bridge of every tank ship in marine waters.

(d) This section does not apply to discharges, or potential discharges, of less than one barrel (42 gallons) of oil unless a more restrictive reporting standard is adopted in the California oil spill contingency plan prepared pursuant to Section 8574.1.

(e) Except as otherwise provided in this section and Section 8589.7, a notification made pursuant to this section shall satisfy any immediate notification requirement contained in any permit issued by a permitting agency.

SEC. 22. Section 8670.26 of the Government Code is amended to read:

8670.26. Any local or state agency responding to a spill of oil shall notify the Office of Emergency Services, if notification as required under Section 8670.25.5, Section 13272 of the Water Code, or any other notification procedure adopted in the California oil spill contingency plan has not occurred.

SEC. 23. Section 8670.27 of the Government Code is amended to read:

8670.27. (a) (1) All potentially responsible parties for discharged oil and all of their agents and employees and all state and local agencies shall carry out response and cleanup operations in accordance with the applicable contingency plan, unless directed otherwise by the administrator or the Coast Guard.

(2) Except as provided in subdivision (b), the responsible party, potentially responsible parties, their agents and employees, the operators of all vessels docked at a marine facility that is the source of a discharge, and all state and local agencies shall carry out spill response consistent with the California oil spill contingency plan or other applicable federal, state, or local spill response plans, and owners and operators shall carry out spill response consistent with their applicable response contingency plans, unless directed otherwise by the administrator or the Coast Guard.

(b) If a responsible party or potentially responsible party reasonably, and in good faith, believes that the directions or orders given by the administrator pursuant to subdivision (a) will substantially endanger the public safety or the environment, the party may refuse to act in compliance with the orders or directions of the administrator. The responsible party or potentially responsible party shall state, at the time of the refusal, the reasons why the party refuses to follow the orders or directions of the administrator. The responsible party or potentially responsible party shall give the administrator written notice of the reasons for the refusal within 48 hours of refusing to follow the orders or directions of the administrator. In any civil or criminal proceeding commenced pursuant to this section, the burden of proof shall be on the responsible party or potentially responsible party to demonstrate, by clear and convincing evidence, why the refusal to follow the orders or directions of the administrator was justified under the circumstances.

SEC. 24. Section 8670.28 of the Government Code is amended to read:

8670.28. (a) The administrator, taking into consideration the marine facility or vessel contingency plan requirements of the national and California contingency plans, the State Lands Commission, the State Fire Marshal, and the California Coastal Commission shall adopt and implement regulations governing the adequacy of oil spill

contingency plans to be prepared and implemented under this article. All regulations shall be developed in consultation with the State Interagency Oil Spill Committee, and the Oil Spill Technical Advisory Committee, and shall be consistent with the California oil spill contingency plan and not in conflict with the National Contingency Plan. The regulations shall provide for the best achievable protection of coastal and marine resources. The regulations shall permit the development, application, and use of an oil spill contingency plan for similar vessels, pipelines, terminals, and facilities within a single company or organization, and across companies and organizations. The regulations shall, at a minimum, ensure all of the following:

(1) All areas of the marine waters of the state are at all times protected by prevention, response, containment, and cleanup equipment and operations. For the purposes of this section, ''marine waters'' includes the waterways used for waterborne commercial vessel traffic to the Port of Stockton and the Port of Sacramento.

(2) Standards set for response, containment, and cleanup equipment and operations are maintained and regularly improved to protect the resources of the state.

(3) All appropriate personnel employed by operators required to have a contingency plan receive training in oil spill response and cleanup equipment usage and operations.

(4) Each oil spill contingency plan provides for appropriate financial or contractual arrangements for all necessary equipment and services, for the response, containment, and cleanup of a reasonable worst case oil spill scenario for each part of the coast the plan addresses.

(5) Each oil spill contingency plan demonstrates that all protection measures are being taken to reduce the possibility of an oil spill occurring as a result of the operation of the marine facility or vessel. The protection measures shall include, but not be limited to, response to disabled vessels and an identification of those measures taken to comply with requirements of Division 7.8 (commencing with Section 8750) of the Public Resources Code.

(6) Each oil spill contingency plan identifies the types of equipment that can be used, the location of the equipment, and the time taken to deliver the equipment.

(7) Each marine facility conducts a hazard and operability study to identify the hazards associated with the operation of the facility, including the use of the facility by vessels, due to operating error, equipment failure, and external events. For the hazards identified in the hazard and operability studies, the facility shall conduct an offsite consequence analysis which, for the most likely hazards, assumes pessimistic water and air dispersion and other adverse environmental conditions.

(8) Each oil spill contingency plan contains a list of contacts to call in the event of a drill, threatened discharge of oil, or discharge of oil.

(9) Each oil spill contingency plan identifies the measures to be taken to protect the recreational and environmentally sensitive areas that would be threatened by a reasonable worst case oil spill scenario.

(10) Standards for determining a reasonable worst case oil spill.

(11) Each oil spill contingency plan includes a timetable for implementing the plan.

(12) Each oil spill contingency plan specifies an agent for service of process. The agent shall be located in this state.

(b) The regulations and guidelines adopted pursuant to this section shall also include provisions to provide public review and comment on submitted oil spill contingency plans prior to approval.

(c) The regulations adopted pursuant to this section shall specifically address the types of equipment that will be necessary, the maximum time that will be allowed for deployment, the maximum distance to cooperating response entities, the amounts of dispersant, and the maximum time required for application, should the use of dispersants be approved. Upon a determination by the administrator that booming is appropriate at the site and necessary to provide best achievable protection, the regulations shall require that vessels engaged in lightering operations be boomed prior to the commencement of operations.

(d) The administrator shall adopt regulations and guidelines for oil spill contingency plans with regard to mobile transfer units, small marine fueling facilities, and vessels carrying oil as secondary cargo that acknowledge the reduced risk of damage from oil spills from those units, facilities, and vessels while maintaining the best achievable protection for the public health and safety and the environment.

(e) The regulations adopted pursuant to subdivision (d) shall be exempt from review by the Office of Administrative Law. Subsequent amendments and changes to the regulations shall not be exempt from Office of Administrative Law review.

SEC. 25. Section 8670.29 of the Government Code is amended to read:

8670.29. (a) In accordance with the rules, regulations, and policies established by the administrator pursuant to Section 8670.28, every owner or operator of a marine facility, small marine fueling facility or mobile transfer unit, prior to operating in the marine waters of the state or where an oil spill could impact marine waters; and every owner or operator of a tank vessel, nontank vessel or vessel carrying oil as secondary cargo before operating in the marine waters of the state, shall prepare and implement an oil spill contingency plan that has been submitted to, and approved by, the administrator pursuant to Section

8670.31. Each oil spill contingency plan shall ensure the undertaking of prompt and adequate response and removal action in case of an oil spill, shall be consistent with the California oil spill contingency plan, and shall not conflict with the National Contingency Plan.

(b) Each oil spill contingency plan shall, at a minimum, meet all of the following requirements:

(1) Be a written document, reviewed for feasibility and executability, and signed by the owner or operator, or their designee.

(2) Provide for the use of an incident command system to be used during a spill.

(3) Provide procedures for reporting oil spills to local, state, and federal agencies, and include a list of contacts to call in the event of a drill, threatened spill, or spill.

(4) Describe the communication plans to be used during a spill.

(5) Describe the strategies for the protection of environmentally sensitive areas.

(6) Identify at least one rated OSRO for each rating level established pursuant to Section 8670.30. Each identified rated OSRO shall be directly responsible by contract, agreement, or other approved means to provide oil spill response activities pursuant to the oil spill contingency plan. A rated OSRO may provide oil spill response activities individually, or in combination with another rated OSRO, for a particular owner or operator.

(7) Identify a qualified individual.

(8) Provide the name, address, telephone, and facsimile numbers for an agent for service of process, located within the state and designated to receive legal documents on behalf of the owner or operator.

(c) An oil spill contingency plan for a vessel shall also include, but is not limited to, all of the following requirements:

(1) Each plan shall be submitted to the administrator at least seven days prior to the vessel entering waters of the state.

(2) Each plan shall provide evidence of compliance with the International Safety Management Code, established by the International Maritime Organization, as applicable.

(3) If the oil spill contingency plan is for a tank vessel, the plan shall include both of the following:

(A) The plan shall specify oil and petroleum cargo capacity.

(B) The plan shall specify the types of oil and petroleum cargo carried.

(4) If the oil spill contingency plan is for a nontank vessel, the plan shall include both of the following:

(A) The plan shall specify the type and total amount of fuel carried.

(B) The plan shall specify the capacity of the largest fuel tank.

(d) An oil spill contingency plan for a marine facility shall also include, but is not limited to, all of the following provisions:

(1) Provisions for site security and control.

(2) Provisions for emergency medical treatment and first aid.

(3) Provisions for safety training, as required by state and federal safety laws for all personnel likely to be engaged in oil spill response.

(4) Provisions detailing site layout and locations of environmentally sensitive areas requiring special protection.

(5) Provisions for vessels that are in the operational control of the facility for loading and unloading.

(6) Provide training and drills at least annually on all of the elements of the plan.

(e) The oil spill contingency plan shall be available to response personnel and to relevant state and federal agencies for inspection and review.

(f) The oil spill contingency plan shall be reviewed periodically and updated as necessary. All updates shall be submitted to the administrator pursuant to this article.

(g) In addition to the regulations adopted pursuant to Section 8670.28, the administrator shall adopt regulations and guidelines to implement this section. The regulations and guidelines shall provide for the best achievable protection of coastal and marine resources. The administrator may establish additional oil spill contingency plan requirements, including, but not limited to, requirements based on the different geographic regions of the state. All regulations and guidelines shall be developed in consultation with the State Interagency Oil Spill Committee and the Oil Spill Technical Advisory Committee.

SEC. 26. Section 8670.31 of the Government Code is amended to read:

8670.31. (a) Each oil spill contingency plan required under this article shall be submitted to the administrator before a tank vessel, nontank vessel, or vessel carrying oil as secondary cargo operates in the marine waters of the state, or before a marine facility, small marine fueling facility, or mobile transfer unit, operates in the marine waters of the state or where an oil spill therefrom could impact marine waters.

(b) The administrator shall review each submitted contingency plan to determine whether it complies with the administrator's rules, policies, and regulations adopted pursuant to Section 8670.28 and 8670.29.

(c) Each contingency plan submitted shall be approved or disapproved within 180 days after receipt by the administrator. The administrator may approve or disapprove portions of a plan. A plan is not deemed approved until all portions are approved pursuant to this section. The disapproved portion shall be subject to the procedures contained in subdivision (d).

(d) If the administrator finds the submitted contingency plan is inadequate under the rules, policies, and regulations of the administrator, the plan shall be returned to the submitter with written reasons why the plan was found inadequate and, if practicable, suggested modifications or alternatives, if appropriate. The submitter shall submit a new or modified plan within 90 days after the earlier plan was returned, responding to the findings and incorporating any suggested modifications. The resubmittal shall be treated as a new submittal and processed according to the provisions of this section, except that the resubmitted plan shall be deemed approved unless the administrator acts pursuant to subdivision (c). Failure to gain approval after the second submission may be determined by the administrator to be a violation of this chapter.

(e) The administrator may make inspections and require drills of any oil spill contingency plan that is submitted.

(f) After the plan has been approved, it shall be resubmitted every five years thereafter. The administrator may require earlier or more frequent resubmission, if warranted. Circumstances that would require an earlier resubmission include, but are not limited to, changes in regulations, new oil spill response technologies, deficiencies identified in the evaluation conducted pursuant to Section 8670.19, or a need for a different oil spill response because of increased need to protect endangered species habitat. The administrator may deny approval of the resubmitted plan if it is no longer considered adequate according to the adopted rules, regulations, and policies of the administrator at the time of resubmission.

(g) (1) Each operator of a tank vessel, vessel carrying oil as a secondary cargo, or marine facility who is required to file an oil spill response plan or update pursuant to provisions of federal law regulating marine oil spill response plans shall, for informational purposes only, submit a copy of that plan or update to the administrator at the time that it is approved by the relevant federal agency.

(2) A tank vessel, vessel carrying oil as a secondary cargo, or marine facility operator is not required to submit a copy of the response plan or update specified in paragraph (1) to the administrator if either the vessel or facility is exempt from having to file a response plan with the state, or if the content of the plan submitted by the operator pursuant to Section 8670.29 is substantially the same as the federal response plan or update.

SEC. 27. Section 8670.35 of the Government Code is amended to read:

8670.35. (a) The administrator, taking into consideration the California oil spill contingency plan, shall promulgate regulations regarding the adequacy of oil spill contingency plan elements of business and hazardous materials area plans required pursuant to Section

25503 of the Health and Safety Code. In developing the guidelines, the administrator shall consult with the State Interagency Oil Spill Committee and the Oil Spill Technical Advisory Committee.

(b) Any local government with jurisdiction over or directly adjacent to marine waters may apply for a grant to complete, update, or revise an oil spill contingency plan element.

(c) Each contingency plan element established under this section shall include provisions for training fire and police personnel in oil spill response and cleanup equipment use and operations.

(d) Each contingency plan element prepared under this section shall be consistent with the local government's local coastal program as certified under Section 30500 of the Public Resources Code, the California oil spill contingency plan, and the National Contingency Plan.

(e) The administrator shall review and approve each contingency plan element established pursuant to this section. If, upon review, the administrator determines that the contingency plan element is inadequate, the administrator shall return it to the agency that prepared it, specifying the nature and extent of the inadequacies, and, if practicable, suggesting modifications. The local government agency shall submit a new or modified plan within 90 days after the plan was returned, responding to the findings and incorporating any suggested modifications.

(f) The administrator shall review the preparedness of local governments to determine whether a program of grants for completing oil spill contingency plan elements is desirable and should be continued. If the administrator determines that local government preparedness should be improved, the administrator shall request the Legislature to appropriate funds from the Oil Spill Prevention and Administration Fund for the purposes of this section.

SEC. 28. Section 8670.36.1 of the Government Code is amended to read:

8670.36.1. (a) To reduce the damages and costs from spills, the administrator shall develop an outreach program to provide assistance to the operators of small craft refueling docks.

(b) The program shall include both of the following:

(1) Voluntary inspections by the administrator. The administrator shall prepare, and maintain on file, a written report recommending how any risk of a spill identified in those inspections may be reduced and how those recommendations could be implemented.

(2) An education and outreach program to inform small craft refueling dock operators and the operators of the vessels they serve of the obligations and potential liabilities from a spill. For the purpose of

this section, ''vessel'' has the same meaning as in Section 21 of the Harbors and Navigation Code.

(c) To ensure effective implementation of the program, each small craft refueling dock shall register with the administrator prior to operating.

(d) The administrator may require information needed to evaluate whether a facility is a small craft refueling dock as defined in Section 8670.3. The administrator may also require any pertinent information regarding the oil spill risk of a small craft refueling dock. This information may include, but shall not be limited to, the following:

(1) The type of oil handled.

(2) The size of storage tanks.

(3) The name and telephone number of the small craft refueling dock operator.

(4) The location and size of the small craft refueling dock.

(e) The administrator may develop regulations to implement this section.

SEC. 29. Section 8670.36.5 of the Government Code is repealed.

SEC. 30. Section 8670.37.5 of the Government Code is amended to read:

8670.37.5. (a) The administrator shall establish a network of rescue and rehabilitation stations for sea birds, sea otters, and other marine mammals. These facilities shall be established and maintained in a state of preparedness to provide the best achievable treatment for marine mammals and birds affected by an oil spill in marine waters. The administrator shall consider all feasible management alternatives for operation of the network.

(b) The first rescue and rehabilitation station established pursuant to this section shall be located within the sea otter range on the central coast. The administrator shall establish regional oiled wildlife rescue and rehabilitation facilities in the Los Angeles Harbor area, the San Francisco Bay area, the San Diego area, the Monterey Bay area, the Humboldt County area, and the Santa Barbara area, and may establish those facilities in other coastal areas of the state as the administrator determines to be necessary. One or more of the oiled wildlife rescue and rehabilitation stations shall be open to the public for educational purposes and shall be available for marine wildlife health research. Wherever possible in the establishment of these facilities, the administrator shall improve existing authorized marine mammal rehabilitation facilities and may expand or take advantage of existing educational or scientific programs and institutions for oiled wildlife rehabilitation purposes. Expenditures shall be reviewed by the agencies and organizations specified in subdivision (c).

(c) The administrator shall consult with the United States Fish and Wildlife Service, the National Marine Fisheries Service, the California Coastal Commission, the Executive Director of the San Francisco Bay Conservation and Development Commission, the Marine Mammal Center, and the International Bird Rescue Center in the design, planning, construction, and operation of the rescue and rehabilitation stations. All proposals for the rescue and rehabilitation stations shall be presented before a public hearing prior to the construction and operation of any rehabilitation station, and, upon completion of the coastal protection element of the California oil spill contingency plan, shall be consistent with the coastal protection element.

(d) The administrator may enter into agreements with nonprofit organizations to establish and equip wildlife rescue and rehabilitation stations and to ensure that they are operated in a professional manner in keeping with the pertinent guidance documents issued by the Office of Oil Spill Prevention and Response in the Department of Fish and Game. The implementation of the agreement shall not constitute a California public works project. The agreement shall be deemed a contract for wildlife rehabilitation as authorized by Section 8670.61.5.

(e) In the event of a spill, the responsible party may request that the administrator perform the rescue and rehabilitation of oiled wildlife required of the responsible party pursuant to this chapter if the responsible party and the administrator enter into an agreement for the reimbursement of the administrator's costs incurred in taking the requested action. If the administrator performs the rescue and rehabilitation of oiled wildlife, the administrator shall primarily utilize the network of rescue and rehabilitation stations established pursuant to subdivision (a), unless more immediate care is required. Any of those activities conducted pursuant to this section or Section 8670.56.5 or 8670.61.5 shall be performed under the direction of the administrator. Nothing in this subdivision shall be construed as removing the responsible party from liability for the costs of, nor the responsibility for, the rescue and rehabilitation of oiled wildlife, as established by this chapter. Nothing in this subdivision shall be construed as prohibiting an owner or operator from retaining, in a contingency plan prepared pursuant to this article, wildlife rescue and rehabilitation services different from the rescue and rehabilitation stations established pursuant to this section.

(f) (1) The administrator shall appoint a rescue and rehabilitation advisory board to advise the administrator regarding operation of the network of rescue and rehabilitation stations established pursuant to subdivision (a), including the economic operation and maintenance of the network. For the purpose of assisting the administrator in determining what constitutes the best achievable treatment for oiled

wildlife, the advisory board shall provide recommendations to the administrator on the care achieved by current standard treatment methods, new or alternative treatment methods, the costs of treatment methods, and any other information which the advisory board believes that the administrator might find useful in making that determination. The administrator shall consult the advisory board in preparing the administrator's submission to the Legislature pursuant to subparagraph (A) of paragraph (2) of subdivision (*l*) of Section 8670.48. The administrator shall present the recommendations of the advisory board to the Oil Spill Technical Advisory Committee created pursuant to Article 8 (commencing with Section 8670.54), upon the request of the committee.

(2) The advisory board shall consist of a balance between representatives of the oil industry, wildlife rehabilitation organizations, and academia. One academic representative shall be from a veterinary school within this state. The United States Fish and Wildlife Service and the National Marine Fisheries Service shall be requested to participate as ex-officio members.

(3) (A) The Legislature hereby finds and declares that since the administrator may rely on the expertise provided by the volunteer members of the advisory board and may be guided by their recommendations in making decisions that relate to operation of the network of rescue and rehabilitation stations, those members should be entitled to the same immunity from liability that is provided other public employees.

(B) Members of the advisory board, while performing functions within the scope of advisory board duties, shall be entitled to the same rights and immunities granted public employees by Article 3 (commencing with Section 820) of Chapter 1 of Part 2 of Division 3.6 of Title 1. Those rights and immunities are deemed to have attached, and shall attach, as of the date of appointment of the member to the advisory board.

SEC. 31. Section 8670.41 of the Government Code is amended to read:

8670.41. (a) The administrator shall charge a nontank vessel owner or operator a reasonable fee, to be collected with each application to obtain a certificate of financial responsibility, in an amount that is based upon the administrator's costs in implementing this chapter relating to nontank vessels. Before January 1, 2005, the fee shall be two thousand five hundred dollars ($2,500), or less per vessel.

(b) The administrator may charge a reduced fee under this section for nontank vessels determined by the administrator to pose a reduced risk of pollution, including, but not limited to, vessels used for research or training and vessels that are moored permanently or rarely move.

(c) The administrator shall deposit all revenue derived from the fees imposed under this section in the Oil Spill Prevention and Administration Fund established in the State Treasury under Section 8670.38.

(d) Revenue derived from the fees imposed under this section may be spent for the purposes listed in subdivision (e) of Section 8670.40, and may not be used for responding to an oil spill.

SEC. 32. Section 8670.48 of the Government Code is amended to read:

8670.48. (a) (1) A uniform oil spill response fee in an amount not exceeding twenty-five cents ($0.25) for each barrel of petroleum products, as set by the administrator pursuant to subdivision (f), shall be imposed upon every person owning petroleum products at the time the petroleum products are received at a marine terminal within this state by means of a vessel from a point of origin outside this state. The fee shall be remitted to the State Board of Equalization by the terminal operator on the 25th day of each month based upon the number of barrels of petroleum products received during the preceding month.

(2) Every owner of petroleum products is liable for the fee until it has been paid to the state, except that payment to a marine terminal operator registered under this chapter is sufficient to relieve the owner from further liability for the fee.

(b) Every operator of a pipeline shall also pay a uniform oil spill response fee in an amount not exceeding twenty-five cents ($0.25) for each barrel of petroleum products, as set by the administrator pursuant to subdivision (f), transported into the state by means of a pipeline operating across, under, or through the marine waters of the state. The fee shall be paid on the 25th day of each month based upon the number of barrels of petroleum products so transported into the state during the preceding month.

(c) (1) Every operator of a refinery shall pay a uniform oil spill response fee in an amount not exceeding twenty-five cents ($0.25) for each barrel of crude oil, as set by the administrator pursuant to subdivision (f), received at a refinery within the state. The fee shall be paid on the 25th day of each month based upon the number of barrels of crude oil so received during the preceding month.

(2) The fee shall not be imposed by a refiner, or a person or entity acting as an agent for a refiner, on crude oil produced by an independent crude oil producer as defined in paragraph (3). The board shall not identify a company as exempt from the fee requirements of this section if that company was reorganized, sold, or otherwise modified with the intent of circumventing the requirements of this section.

(3) For purposes of this chapter, ‘‘independent crude oil producer’’ means any person or entity producing crude oil within this state who

performs no refining of crude oil into product, and who possesses or owns no retail gasoline marketing facilities.

(d) Every marine terminal operator shall pay a uniform oil spill response fee in an amount not exceeding twenty-five cents ($0.25), in accordance with subdivision (g), for each barrel of crude oil, as set by the administrator pursuant to subdivision (f), that is transported from within this state by means of marine vessel to a destination outside this state.

(e) Every operator of a pipeline shall pay a uniform oil spill response fee in an amount not exceeding twenty-five cents ($0.25), in accordance with subdivision (g), for each barrel of crude oil, as set by the administrator pursuant to subdivision (f), transported out of the state by pipeline.

(f) (1) The fees required pursuant to this section shall be collected during any period that the administrator determines that either the amount in the fund is less than or equal to 95 percent of the designated amount specified in subdivision (a) of Section 46012 of the Revenue and Taxation Code, or that additional money is required to pay for the purposes specified in subdivision (k).

(2) Whenever the administrator, in consultation with the State Board of Equalization, estimates that the amount in the fund will reach the designated amount specified in subdivision (a) of Section 46012 of the Revenue and Taxation Code, and the money in the fund is not required for the purposes specified in subdivision (k), the administrator shall direct the State Board of Equalization to cease collecting the fee. In no event shall the fee cease to be imposed if the Treasurer has borrowed money pursuant to Article 7.5 (commencing with Section 8670.53.1) and principal, interest, premium, fees, charges, or costs of any kind imposed in connection with those borrowings remain outstanding or unpaid, unless the Treasurer has certified to the administrator that the continued imposition of the fee is not required for the purposes specified in paragraph (7) of subdivision (k).

(3) The administrator, in consultation with the State Board of Equalization, shall set the amount of the oil spill response fees. The oil spill response fees shall be imposed on all feepayers in the same amount. The administrator shall not set the amount of the fee at less than twenty-five cents ($0.25) for each barrel of petroleum products or crude oil, unless the administrator finds that the assessment of a lesser fee will cause the fund to reach the designated amount within four months. The fee shall not be less than twenty-five cents ($0.25) for each barrel of petroleum products or crude oil if the Treasurer has borrowed money pursuant to Article 7.5 (commencing with Section 8670.53.1) and principal, interest, premium, fees, charges, or costs of any kind imposed in connection with those borrowings remain outstanding or unpaid,

unless the Treasurer has certified to the administrator that the money in the fund is not required for the purposes specified in paragraph (7) of subdivision (k).

(g) The fees imposed by subdivisions (d) and (e) shall be imposed in any calendar year beginning the month following the month when the total cumulative year-to-date barrels of crude oil transported outside the state by all feepayers by means of vessel or pipeline exceeds 6 percent by volume of the total barrels of crude oil and petroleum products subject to oil spill response fees under subdivisions (a), (b), and (c) for the prior calendar year.

(h) For purposes of this chapter, ''designated amount'' means the amounts specified in Section 46012 of the Revenue and Taxation Code.

(i) The administrator shall authorize refunds of any money collected in excess of the designated amount specified in subdivision (a) of Section 46012 of the Revenue and Taxation Code, any amounts determined by the administrator to be necessary to provide for any of the purposes specified in paragraphs (1) to (6), inclusive, of subdivision (k), and, if the Treasurer has borrowed money pursuant to Article 7.5 (commencing with Section 8670.53.1) and principal, interest, premium, fees, charges, or costs of any kind imposed in connection with those borrowings remain outstanding or unpaid, any amounts that the Treasurer has certified to the administrator as being required for the purposes specified in paragraph (7) of subdivision (k). The State Board of Equalization, as directed by the administrator, and in accordance with Section 46653 of the Revenue and Taxation Code, shall refund the excess amount of fees collected to each feepayer who paid the fee to the state, in proportion to the amount that each feepayer paid into the fund during the preceding 12 monthly reporting periods in which there was a fee due, including the month in which the fund exceeded the specified amount. If the total amount of money in the fund exceeds the amount specified in this subdivision by 10 percent or less, refunds need not be ordered by the administrator. Nothing in this section shall require the refund of excess fees as provided in this subdivision more frequently than once each year.

(j) The State Board of Equalization shall collect the fee and adopt regulations implementing the fee collection program. All fees collected pursuant to this section shall be deposited in the Oil Spill Response Trust Fund.

(k) The fee described in this section shall be collected solely for any of the following purposes:

(1) To provide funds to cover promptly the costs of response, containment, and cleanup of oil spills into marine waters, including damage assessment costs, and wildlife rehabilitation as provided in Section 8670.61.5.

(2) To cover response and cleanup costs and other damages suffered by the state or other persons or entities from oil spills into marine waters, which cannot otherwise be compensated by responsible parties or the federal government.

(3) To pay claims for damages pursuant to Section 8670.51.

(4) To pay claims for damages, except for damages described in paragraph (7) of subdivision (h) of Section 8670.56.5, pursuant to Section 8670.51.1.

(5) To pay for the arrangement of financial security in the amount specified in subdivision (b) of Section 46012 of the Revenue and Taxation Code, as authorized by subdivision (p).

(6) To pay indemnity and related costs and expenses as authorized by Section 8670.56.6.

(7) To pay principal, interest, premium, if any, and fees, charges, and costs of any kind imposed in connection with funds borrowed pursuant to Article 7.5 (commencing with Section 8670.53.1).

(8) To pay for the costs of rescue, medical treatment, rehabilitation, and disposition of oiled wildlife, as incurred by the network of oiled wildlife rescue and rehabilitation stations created pursuant to Section 8670.37.5.

(*l*) (1) The interest that the state earns on the funds deposited into the Oil Spill Response Trust Fund shall be deposited in the fund and shall be used to maintain the fund at the designated amount. Interest earned until July 1, 1998, on funds deposited pursuant to subdivision (a) of Section 46012 of the Revenue and Taxation Code, as determined jointly by the Controller and the Director of Finance, shall be available upon appropriation by the Legislature in the Budget Act to establish, equip, operate, and maintain the network of rescue and rehabilitation stations for oiled wildlife as described in Section 8670.37.5 and to support technology development and research related to oiled wildlife care. Interest earned on the financial security portion of the fund, required to be accessible pursuant to subdivision (b) of Section 46012 of the Revenue and Taxation Code shall not be available for that purpose. If the fund exceeds that designated amount, the interest not needed to equip, operate, and maintain the network of rescue and rehabilitation stations, or for appropriate technology development and research regarding oiled wildlife care, shall be deposited into the Oil Spill Prevention and Administration Fund, and shall be available for the purposes authorized by Article 6 (commencing with Section 8670.38).

(2) (A) For each fiscal year, consistent with this article, the administrator shall submit for appropriation through the Governor's Budget, an amount up to one million three hundred thousand dollars ($1,300,000), of the interest earned on the funds deposited into the Oil Spill Response Trust Fund, for the purpose of equipping, operating, and

maintaining the network of oiled wildlife rescue and rehabilitation stations established pursuant to Section 8670.37.5 and for support of technology development and research related to oiled wildlife care. Through the budget process, the Legislature shall review and approve the appropriation. The remaining interest shall be deposited into the Oil Spill Prevention and Administration Fund pursuant to paragraph (1).

(B) The administrator shall report to the Legislature not later than June 30, 2002, on the progress and effectiveness of the network of oiled wildlife rescue and rehabilitation stations established pursuant to Section 8670.37.5, and the adequacy of the Oil Spill Response Trust Fund to meet the purposes for which it was established.

(C) At the administrator's request, the funds made available pursuant to this paragraph may be directly appropriated to a suitable program for wildlife health and rehabilitation within a school of veterinary medicine within this state, provided that an agreement exists, consistent with this chapter, between the administrator and an appropriate representative of the program for carrying out that purpose. The administrator shall attempt to have an agreement in place at all times. The agreement shall ensure that the training of, and the care provided by, the program staff are at levels that are consistent with those standards generally accepted within the veterinary profession.

(D) The funds made available pursuant to this paragraph shall not be considered an offset to any other state funds appropriated to the program, the program's associated school of veterinary medicine, or the program's associated college or university, and the funds shall not be used for any other purpose. If an offset does occur or the funds are used for an unintended purpose, expenditure of any appropriation of funds pursuant to this paragraph may be terminated by the administrator and the administrator may request a reappropriation to accomplish the intended purpose. The administrator shall annually review and approve the proposed uses of any funds made available pursuant to this paragraph.

(m) The Legislature finds and declares that effective response to oil spills requires that the state have available sufficient funds in a response fund. The Legislature further finds and declares that maintenance of that fund is of utmost importance to the state and that the money in the fund shall be used solely for the purposes specified in subdivision (k).

(n) It is the intent of the Legislature, in enacting this section, that the fee shall not be imposed by a refiner, or a person or entity acting as an agent for a refiner, on crude oil produced by an independent crude oil producer.

(o) The Treasurer shall purchase financial security, in the designated amount specified in subdivision (b) of Section 46012 of the Revenue and Taxation Code, which may be drawn upon immediately by the administrator upon making the determinations required by Section

8670.49. The financial security shall be in the form described in subdivision (a) of Section 8670.53.3.

(p) Nothing in this section limits the authority of the administrator to raise oil spill response fees pursuant to Section 8670.48.5.

SEC. 33. Section 8670.50 of the Government Code is amended to read:

8670.50. (a) Money from the fund may only be expended to cover the costs incurred by the state and local governments and agencies for all of the following:

(1) Respond promptly to, contain, and clean up the discharge, provided those efforts are pursuant to the state and local oil spill contingency plans established under this chapter, the marine response element of the California oil spill contingency plan established under Article 3.5 (commencing with Section 8574.1) of Chapter 7, or those efforts are undertaken at the direction of the administrator.

(2) Meet the requirements of Section 8670.61.5, relating to wildlife rehabilitation.

(3) Make the payments contemplated by subdivision (k) of Section 8670.48.

(b) In the event of an oil spill, the administrator shall make whatever expenditures are necessary and appropriate from the fund to cover the costs described in subdivision (a).

SEC. 34. Section 8670.52 of the Government Code is repealed.

SEC. 35. Section 8670.56.5 of the Government Code is amended to read:

8670.56.5. (a) Any responsible party, as defined in Section 8670.3, shall be absolutely liable without regard to fault for any damages incurred by any injured party which arise out of, or are caused by, the discharge or leaking of oil into or onto marine waters.

(b) A responsible person is not liable to an injured party under this section for any of the following:

(1) Damages, other than costs of removal incurred by the state or a local government, caused solely by any act of war, hostilities, civil war, or insurrection or by an unanticipated grave natural disaster or other act of God of an exceptional, inevitable, and irresistible character, which could not have been prevented or avoided by the exercise of due care or foresight.

(2) Damages caused solely by the negligence or intentional malfeasance of that injured party.

(3) Damages caused solely by the criminal act of a third party other than the defendant or an agent or employee of the defendant.

(4) Natural seepage not caused by a responsible party.

(5) Discharge or leaking of oil or natural gas from a private pleasure boat or vessel.

(6) Damages that arise out of, or are caused by, a discharge that is authorized by a state or federal permit.

(c) The defenses provided in subdivision (b) shall not be available to a responsible person who fails to comply with Sections 8670.25, 8670.25.5, 8670.27, and 8670.62.

(d) Upon motion and sufficient showing by a party deemed to be responsible under this section, the court shall join to the action any other party who may be responsible under this section.

(e) In determining whether a party is a responsible party under this section, the court shall consider the results of any chemical or other scientific tests conducted to determine whether oil or other substances produced, discharged, or controlled by the defendant matches the oil or other substance which caused the damage to the injured party. The defendant shall have the burden of producing the results of tests of samples of the substance which caused the injury and of substances for which the defendant is responsible, unless it is not possible to conduct the tests because of unavailability of samples to test or because the substance is not one for which reliable tests have been developed. At the request of any party, any other party shall provide samples of oil or other substances within its possession or control for testing.

(f) The court may award reasonable costs of the suit, attorneys' fees, and the costs of any necessary expert witnesses to any prevailing plaintiff. The court may award reasonable costs of the suit and attorneys' fees to any prevailing defendant if the court finds that the plaintiff commenced or prosecuted the suit under this section in bad faith or solely for purposes of harassing the defendant.

(g) This section does not prohibit any person from bringing an action for damages caused by oil or by exploration, under any other provision or principle of law, including, but not limited to, common law. However, damages shall not be awarded pursuant to this section to an injured party for any loss or injury for which the party is or has been awarded damages under any other provision or principle of law. Subdivision (b) does not create any defense not otherwise available regarding any action brought under any other provision or principle of law, including, but not limited to, common law.

(h) Damages for which responsible parties are liable under this section include the following:

(1) All costs of response, containment, cleanup, removal, and treatment, including, but not limited to, monitoring and administration costs incurred pursuant to the California oil spill contingency plan or actions taken pursuant to directions by the administrator.

(2) Injury to, or economic losses resulting from destruction of or injury to, real or personal property, which shall be recoverable by any claimant who has an ownership or leasehold interest in property.

(3) Injury to, destruction of or loss of, natural resources, including, but not limited to, the reasonable costs of rehabilitating wildlife, habitat, and other resources and the reasonable costs of assessing that injury, destruction, or loss, in any action brought by the state, a county, city, or district. Damages for the loss of natural resources may be determined by any reasonable method, including, but not limited to, determination according to the costs of restoring the lost resource.

(4) Loss of subsistence use of natural resources, which shall be recoverable by any claimant who so uses natural resources that have been injured, destroyed, or lost.

(5) Loss of taxes, royalties, rents, or net profit shares caused by the injury, destruction, loss, or impairment of use of real property, personal property, or natural resources.

(6) Loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant who derives at least 25 percent of his or her earnings from the activities which utilize the property or natural resources, or, if those activities are seasonal in nature, 25 percent of his or her earnings during the applicable season.

(7) Loss of use and enjoyment of natural resources, public beaches, and other public resources or facilities, in any action brought by the state, a county, city, or district.

(i) Except as provided in Section 1431.2 of the Civil Code, liability under this section shall be joint and several. However, this section does not bar a cause of action that a responsible party has or would have, by reason of subrogation or otherwise, against any person.

(j) This section does not apply to claims for damages for personal injury or wrongful death, and does not limit the right of any person to bring an action for personal injury or wrongful death under any provision or principle of law.

(k) Any payments made by a responsible party to cover liabilities arising from a discharge of oil, whether under this division or any other provision of federal, state, or local law, shall not be charged against any royalties, rents, or net profits owed to the United States, the state, or any other public entity.

(*l*) Any action which a private or public individual or entity may have against a responsible party under this section may be brought directly by the individual or entity or by the state on behalf of the individual or entity. However, the state shall not pursue any action on behalf of a private individual or entity which requests the state not to pursue that action.

(m) For the purposes of this section, ''vessels'' means vessels as defined in Section 21 of the Harbors and Navigation Code.

SEC. 36. Section 8670.56.6 of the Government Code is amended to read:

8670.56.6. (a) (1) Except as provided in subdivisions (b) and (d), and subject to subdivision (c), no person, including, but not limited to, an oil spill cooperative, its agents, subcontractors, or employees, shall be liable under this chapter or the laws of the state to any person for costs, damages, or other claims or expenses as a result of actions taken or omitted in good faith in the course of rendering care, assistance, or advice in accordance with the National Contingency Plan, the California oil spill contingency plan, or at the direction of the administrator, onsite coordinator, or the Coast Guard in response to a spill or threatened spill of oil.

(2) The qualified immunity under this section shall not apply to any oil spill response action that is inconsistent with the following:

(A) The directions of the unified command, consisting of at least the Coast Guard and the administrator.

(B) In the absence of a unified command, the directions of the administrator pursuant to Section 8670.27.

(C) In the absence of directions pursuant to subparagraph (A) or (B), applicable oil spill contingency plans implemented under this division.

(3) Nothing in this section shall, in any manner or respect, affect or impair any cause of action against or any liability of any person or persons responsible for the spill, for the discharged oil, or for the vessel, terminal, pipeline, or facility from which the oil was discharged. The responsible person or persons shall remain liable for any and all damages arising from the discharge, including damages arising from improperly carried out response efforts, as otherwise provided by law.

(b) Nothing in this section shall, in any manner or respect, affect or impair any cause of action against or any liability of any party or parties responsible for the spill, or the responsible party's agents, employees, or subcontractors, except persons immunized under subdivision (a) for response efforts, for the discharged oil, or for the vessel, terminal, pipeline, or marine facility from which the oil was discharged.

(c) The responsible party or parties shall be subject to both of the following:

(1) Notwithstanding subdivision (b) or (i) of Section 8670.56.5, or any other provision of law, be strictly and jointly and severally liable for all damages arising pursuant to subdivision (h) of Section 8670.56.5 from the response efforts of its agents, employees, subcontractors, or an oil spill cooperative of which it is a member or with which it has a contract or other arrangement for cleanup of its oil spills, unless it would have a defense to the original spill.

(2) Remain strictly liable for any and all damages arising from the response efforts of a person other than a person specified in paragraph (1).

(d) Nothing in this section shall immunize a cooperative or any other person from liability for acts of gross negligence or willful misconduct in connection with the cleanup of a spill.

(e) This section does not apply to any action for personal injury or wrongful death.

(f) As used in this section, a ''cooperative'' means an organization of private persons which is established for the primary purpose and activity of preventing or rendering care, assistance, or advice in response to a spill or threatened spill.

(g) Except for the responsible party, membership in a cooperative shall not, in and of itself, be grounds for liability resulting from cleanup activities of the cooperative.

(h) For purposes of this section, there shall be a rebuttable presumption that an act or omission described in subdivision (a) was taken in good faith.

(i) In any situation in which immunity is granted pursuant to subdivision (a) and a responsible party is not liable, is not liable for noneconomic damages caused by another, or is partially or totally insolvent, the fund provided for in Article 7 (commencing with Section 8670.46) shall, in accordance with its terms, reimburse claims of any injured party for which a person who is granted immunity pursuant to this section would otherwise be liable.

(j) (1) The immunity granted by this section shall only apply to response efforts that are undertaken after the administrator certifies that contracts with qualified and responsible persons are in place to ensure an adequate and expeditious response to any foreseeable oil spill that may occur in marine waters for which the responsible party (A) cannot be identified or (B) is unable or unwilling to respond, contain, and clean up the oil spill in an adequate and timely manner. In negotiating these contracts, the administrator shall, to the maximum extent practicable, procure the services of persons who are willing to respond to oil spills with no, or lesser, immunity than that conferred by this section, but, in no event, a greater immunity. The administrator shall make the certification required by this subdivision on an annual basis. Upon certification, the immunity conferred by this section shall apply to all response efforts undertaken during the calendar year to which the certification applies. In the absence of the certification required by this subdivision, the immunity conferred by this section shall not attach to any response efforts undertaken by any person in marine waters.

(2) In addition to the authority to negotiate contracts described in paragraph (1), the administrator may also negotiate and enter into

indemnification agreements with qualified and financially responsible persons to respond to oil spills that may occur in marine waters for which the responsible party (A) cannot be identified or (B) is unable or unwilling to respond, contain, and clean up the oil spill in an adequate and timely manner.

(3) The administrator may indemnify response contractors for (A) all damages payable by means of settlement or judgment that arise from response efforts to which the immunity conferred by this section would otherwise apply, and (B) reasonably related legal costs and expenses incurred by the responder, provided that indemnification shall only apply to response efforts undertaken after the expiration of any immunity that may exist as the result of the contract negotiations authorized in this subdivision. In negotiating these contracts, the administrator shall, to the maximum extent practicable, procure the services of persons who are willing to respond to oil spills with no, or as little, right to indemnification as possible. All indemnification shall be paid by the administrator from the Oil Spill Response Trust Fund.

(4) (A) The contracts required by this section, and any other contracts entered into by the administrator for response, containment, or cleanup of an existing spill, the payment of which is to be made from the Oil Spill Response Trust Fund created pursuant to Section 8670.46, or for response to an imminent threat of a spill, the payment of which is to be made out of the Oil Spill Prevention and Administration Fund created pursuant to Section 8670.38, shall be exempt from Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code and Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code.

(B) The exemption specified in subparagraph (A) applies only to contracts for which the services are used for a period of less than 90 days, cumulatively, per year.

(C) This paragraph shall not be construed as limiting the administrator's authority to exercise the emergency powers granted pursuant to subdivision (c) of Section 8670.62, including the authority to enter into emergency contracts that are exempt from approval by the Department of General Services.

(k) (1) With regard to a person who is regularly engaged in the business of responding to oil spills, the immunity conferred by this section shall not apply to any response efforts by that person that occur later than 60 days after the first day the person's response efforts commence.

(2) Notwithstanding the limitation contained in paragraph (1), the administrator may, upon making all the following findings, extend the period of time, not to exceed 30 days, during which the immunity conferred by this section applies to response efforts:

(A) Due to inadequate or incomplete containment and stabilization, there exists a substantial probability that the size of the spill will significantly expand and (i) threaten previously uncontaminated marine or land resources, (ii) threaten already contaminated marine or land resources with substantial additional contamination, or (iii) otherwise endanger the public health and safety or harm the environment.

(B) The remaining work is of a difficult or perilous nature that extension of the immunity is clearly in the public interest.

(C) No other qualified and financially responsible contractor is prepared and willing to complete the response effort in the absence of the immunity, or a lesser immunity, as negotiated by contract.

(3) The administrator shall provide five days' notice of his or her proposed decision to either extend, or not extend, the immunity conferred by this section. Interested parties shall be given an opportunity to present oral and written evidence at an informal hearing. In making his or her proposed decision, the administrator shall specifically seek and consider the advice of the relevant Coast Guard representative. The administrator's decision to not extend the immunity shall be announced at least 10 working days before the expiration of the immunity to provide persons an opportunity to terminate their response efforts as contemplated by paragraph (4).

(4) No person or their agents, subcontractors, or employees shall incur any liability under this chapter or any other provision of law solely as a result of that person's decision to terminate their response efforts because of the expiration of the immunity conferred by this section. A person's decision to terminate response efforts because of the expiration of the immunity conferred by this section shall not in any manner impair, curtail, limit, or otherwise affect the immunity conferred on the person with regard to the person's response efforts undertaken during the period of time the immunity applied to those response efforts.

(5) The immunity granted under this section shall attach, without the limitation contained in this subdivision, to the response efforts of any person who is not regularly engaged in the business of responding to oil spills. A person who is not regularly engaged in the business of responding to oil spills includes, but is not limited to, (A) a person who is primarily dedicated to the preservation and rehabilitation of wildlife and (B) a person who derives his or her livelihood primarily from fishing.

(*l*) As used in this section, ''response efforts'' means rendering care, assistance, or advice in accordance with the National Contingency Plan, the California oil spill contingency plan, or at the direction of the administrator, onsite coordinator, or the Coast Guard in response to a spill or threatened spill into marine waters.

SEC. 37. Section 8670.61.5 of the Government Code is amended to read:

8670.61.5. (a) For purposes of this chapter, ''wildlife rehabilitation'' means those actions that are necessary to fully mitigate for the damage caused to wildlife, fisheries, wildlife habitat, and fisheries habitat, including beaches, from the spill of oil into marine waters.

(b) Responsible parties shall fully mitigate adverse impacts to wildlife, fisheries, wildlife habitat, and fisheries habitat. Full mitigation shall be provided by successfully carrying out environmental projects or funding restoration activities required by the administrator in carrying out projects complying with the requirements of this section. Responsible parties are also liable for the costs incurred by the administrator or other government agencies in carrying out this section.

(c) If any significant wildlife rehabilitation is necessary, the administrator may require the responsible party to prepare and submit a wildlife rehabilitation plan to the administrator. The plan shall describe the actions that will be implemented to fully meet the requirements of subdivision (b), describe contingency measures which will be carried out in the event that any of the plan actions are not fully successful, provide a reasonable implementation schedule, describe the monitoring and compliance program, and provide a financing plan. The administrator shall review and determine whether to approve the plan within 60 days of submittal. Before approving a plan, the administrator shall first find that the implementation of the plan will fully mitigate the adverse impacts to wildlife, fisheries, wildlife habitat, and fisheries habitat. If the habitat contains beaches that are or were used for recreational purposes, the Department of Parks and Recreation shall review the plan and provide comments to the administrator.

(d) The plan shall place first priority on avoiding and minimizing any adverse impacts. For impacts that do occur, the plan shall provide for full onsite restoration of the damaged resource to the extent feasible. To the extent that full onsite restoration is not feasible, the plan shall provide for offsite in-kind mitigation to the extent feasible. To the extent that adverse impacts still have not been fully mitigated, the plan shall provide for the enhancement of other similar resources to the extent necessary to meet the requirements of subdivision (b). In evaluating whether a wildlife rehabilitation plan is adequate, the administrator may use the habitat evaluation procedures established by the United States Fish and Wildlife Service or any other reasonable methods as determined by the Director of Fish and Game.

(e) The administrator shall prepare regulations to implement this section. The regulations shall include deadlines for the submittal of plans. In establishing the deadlines, the administrator shall consider

circumstances such as the size of the spill and the time needed to assess damage and mitigation.

SEC. 38. Section 8670.71 of the Government Code is amended to read:

8670.71. (a) The administrator shall fund only those projects approved by the Environmental Enhancement Committee.

(b) For the purposes of this article, an enhancement project is a project that acquires habitat for preservation, or improves habitat quality and ecosystem function above baseline conditions, and that meets all of the following requirements:

(1) Is located within or immediately adjacent to California marine waters, as defined in subdivision (i) of Section 8670.3.

(2) Has measurable outcomes within a predetermined timeframe.

(3) Is designed to acquire, restore, or improve habitat or restore ecosystem function, or both, to benefit fish and wildlife.

SEC. 39. Section 8670.72 of the Government Code is amended to read:

8670.72. (a) The Environmental Enhancement Committee is hereby created. The committee shall consist of the following members:

(1) The administrator.

(2) A public member, to be appointed by the administrator, who shall be an officer or elected leader of a statewide nonprofit organization whose primary purpose is the protection and/or enhancement of natural resources.

(3) The executive officer of the State Coastal Conservancy, or his or her designee.

(b) The Environmental Enhancement Committee shall establish a process for the solicitation, submittal, review, and selection of environmental enhancement projects. Selection criteria shall be developed to ensure that projects meet the intent of this article.

SEC. 39.5. Section 8670.73 is added to the Government Code, to read:

8670.73. (a) The Environmental Enhancement Grant Program is hereby established. Project proposals shall be solicited when adequate funds have accumulated in the Environmental Enhancement Fund to cover the cost of an appropriate project or projects.

(b) Grants shall be awarded to nonprofit organizations, cities, counties, cities and counties, districts, state agencies, and departments; and, to the extent permitted by federal law, to federal agencies on a competitive basis using the selection process established by the Environmental Enhancement Committee. The selection criteria will be enumerated in all requests for proposals distributed to potential applicants. The administrator may grant funds for those projects that are selected by the Environmental Enhancement Committee and that meet

the requirements of this article. State departments and agencies receiving grants under this section for environmental enhancement projects, shall, to the maximum extent feasible, utilize the services of the California Conservation Corps in accordance with Section 14315 of the Public Resources Code.

(c) Grant recipients shall use the grant award to fund only the project described in the recipient's application.

(d) Grant recipients shall not use the grant funds to shift money to or otherwise cover costs of an existing or proposed project or activity not included in the application.

(e) Any grant funds allocated to a project that exceed the actual cost of completing the project as outlined in the recipient's application shall be returned to the Environmental Enhancement Fund, and shall not be used by the grant recipient for any other purpose.

(f) If a member of the Environmental Enhancement Committee, or a member of his or her immediate family, is employed by a grant applicant, the employer of a grant applicant, or a consultant or independent contractor employed by the grant applicant, the committee member shall make that disclosure to the other members of the committee and shall not participate or make recommendations on the grant proposal of that applicant.

(g) For habitat acquisition, the Environmental Enhancement Committee shall be subject to the same provisions as prescribed in Section 31116 of the Public Resources Code.

SEC. 40. Section 449.3 of the Harbors and Navigation Code is amended to read:

449.3. The marine exchange shall cooperate fully with the administrator appointed pursuant to Section 8670.4 of the Government Code in the development and implementation of the vessel traffic service system required by Section 8670.21 of the Government Code. Upon certification by the administrator that, pursuant to Section 8670.21, the Coast Guard has commenced operation of a fully federally funded vessel traffic service system for the Los Angeles/Long Beach harbor, the authorization contained in Section 445 for the marine exchange to operate a vessel traffic service is revoked.

SEC. 41. Section 449.5 of the Harbors and Navigation Code is amended to read:

449.5. (a) Upon request by the administrator, the marine exchange shall submit a complete description and operational status report of the vessel traffic service. After a public hearing, the administrator shall, in accordance with paragraph (8) of subdivision (f) of Section 8670.21 of the Government Code, determine whether the elements and operation of the vessel traffic service are consistent with the harbor safety plan for the Los Angeles and Long Beach harbors developed pursuant to Section

8670.23.1 of the Government Code and the standards of a statewide vessel traffic service plan or system developed pursuant to Section 8670.21 of the Government Code.

(b) If, pursuant to subdivision (a), the administrator determines that the vessel traffic service is inconsistent with the harbor safety plan for the Los Angeles and Long Beach harbors developed pursuant to Section 8670.23.1 of the Government Code and the standards of a statewide vessel traffic service plan or vessel traffic monitoring and communications system developed pursuant to Section 8670.21 of the Government Code, the administrator shall issue an order to the marine exchange which specifies modifications to the vessel traffic service to eliminate the inconsistencies.

(c) If the marine exchange has not complied with an order within six months of issuance, then the administrator, after a public hearing, may take any or all of the following actions:

(1) Impose on the marine exchange an administrative fine of not more than five thousand dollars ($5,000) for each day the marine exchange does not comply with the administrator's order.

(2) Administratively revoke the authorization provided to the marine exchange by Section 445 to operate the vessel traffic service.

(d) If authorization for the marine exchange to operate the vessel traffic service is revoked pursuant to this section, the administrator shall take any action that is necessary to expeditiously establish a vessel traffic service for the Los Angeles and Long Beach harbors. The action may include the assessment of fees on vessels, port users, and ports, and the making of needed expenditures, as provided in subdivision (d) of Section 8670.21.

SEC. 42. Section 8750 of the Public Resources Code is amended to read:

8750. Unless the context requires otherwise, the following definitions govern the construction of this division:

(a) ''Administrator'' means the administrator for oil spill response appointed by the Governor pursuant to Section 8670.4 of the Government Code.

(b) ''Barges'' means any vessel that carries oil in commercial quantities as cargo but is not equipped with a means of self-propulsion.

(c) (1) ''Best achievable protection'' means the highest level of protection which can be achieved through both the use of the best achievable technology and those manpower levels, training procedures, and operational methods which provide the greatest degree of protection achievable. The administrator's determination of best achievable protection shall be guided by the critical need to protect valuable coastal resources and marine waters, while also considering (A) the protection

provided by the measures, (B) the technological achievability of the measures, and (C) the cost of the measures.

(2) It is not the intent of the Legislature that the administrator use a cost-benefit or cost-effectiveness analysis or any particular method of analysis in determining which measures to require. Instead, it is the intent of the Legislature that the administrator give reasonable consideration to the protection provided by the measures, the technological achievability of the measures, and the cost of the measures when establishing the requirements to provide the best achievable protection for coastal and marine resources.

(d) ''Best achievable technology'' means that technology which provides the greatest degree of protection taking into consideration (1) processes which are being developed, or could feasibly be developed anywhere in the world, given overall reasonable expenditures on research and development, and (2) processes which are currently in use anywhere in the world. In determining what is best achievable technology, the administrator shall consider the effectiveness and engineering feasibility of the technology.

(e) ''Commission'' means the State Lands Commission.

(f) ''Local government'' means any chartered or general law city, chartered or general law county or any city and county.

(g) ''Marine facility'' means any facility of any kind, other than a vessel, which is or was used for the purposes of exploring for, drilling for, producing, storing, handling, transferring, processing, refining, or transporting oil and is located in marine waters, or is located where a discharge could impact marine waters unless the facility (1) is subject to Chapter 6.67 (commencing with Section 25270) or Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code or (2) is placed on a farm, nursery, logging site, or construction site and does not exceed 20,000 gallons in a single storage tank. For the purposes of this division, a drill ship, semisubmersible drilling platform, jack-up type drilling rig, or any other floating or temporary drilling platform is a ''marine facility.'' For the purposes of this division, a small craft refueling dock is not a ''marine facility.''

(h) ''Marine terminal'' means any marine facility used for transferring oil to or from tankers or barges. For the purposes of this section, a marine terminal includes all piping not integrally connected to a tank facility as defined in subdivision (k) of Section 25270.2 of the Health and Safety Code.

(i) ''Marine waters'' means those waters subject to tidal influence, except for waters in the Sacramento-San Joaquin Rivers and Delta upstream from a line running north and south through the point where Contra Costa, Sacramento, and Solano Counties meet.

(j) ''Nonpersistent oil'' means a petroleum-based oil, such as gasoline, diesel, or jet fuel, which evaporates relatively quickly. Specifically, it is an oil with hydrocarbon fractions, at least 50 percent of which, by volume, distills at a temperature of 645 degrees Fahrenheit, and at least 95 percent of which, by volume, distills at a temperature of 700 degrees Fahrenheit.

(k) ''Oil'' means any kind of petroleum, liquid hydrocarbons, or petroleum products or any fraction or residues therefrom, including, but not limited to, crude oil, bunker fuel, gasoline, diesel fuel, aviation fuel, oil sludge, oil refuse, oil mixed with waste, and liquid distillates from unprocessed natural gas.

(*l*) ''Onshore facility'' means any facility of any kind which is located entirely on lands not covered by marine waters.

(m) ''Operator'' when used in connection with vessels, marine terminals, pipelines, or facilities, means any person or entity which owns, has an ownership interest in, charters, leases, rents, operates, participates in the operation of or uses that vessel, terminal, pipeline, or facility. ''Operator'' does not include any entity which owns the land underlying the facility or the facility itself, where the entity is not involved in the operations of the facility.

(n) ''Person'' means an individual, trust, firm, joint stock company, or corporation, including, but not limited to, a government corporation, partnership, limited liability company, and association. ''Person'' also includes any city, county, city and county, district, and the state or any department or agency thereof, and the federal government, or any department or agency thereof, to the extent permitted by law.

(o) ''Pipeline'' means any pipeline used at any time to transport oil.

(p) ''Responsible party'' or ''party responsible'' means either of the following:

(1) The owner or transporter of oil or a person or entity accepting responsibility for the oil.

(2) The owner, operator, or lessee of, or person who charters by demise, any vessel or marine facility or a person or entity accepting responsibility for the vessel or marine facility.

(q) ''Small craft refueling dock'' means a fixed facility having tank storage capacity not exceeding 20,000 gallons in any single storage tank and that dispenses nonpersistent oil to small craft.

(r) ''Spill'' or ''discharge'' means any release of at least one barrel (42 gallons) of oil not authorized by any federal, state, or local government entity.

(s) ''State oil spill contingency plan'' means the California oil spill contingency plan prepared pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7 of Division 1 of Title 2 of the Government Code.

(t) ''Tanker'' means any self-propelled, waterborne vessel, constructed or adapted for the carriage of oil in bulk or in commercial quantities as cargo.

(u) ''Vessel'' means a tanker or barge as defined in this section.

SEC. 43. Section 46016 of the Revenue and Taxation Code is amended to read:

46016. ''Marine facility'' means any facility of any kind, other than a vessel, which is or was used for the purposes of exploring for, drilling for, producing, storing, handling, transferring, processing, refining, or transporting crude oil or petroleum products and is located in marine waters, or is located where a discharge could impact marine waters unless the facility, (1) is subject to Chapter 6.67 (commencing with Section 25270) or Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code or, (2) is placed on a farm, nursery, logging site, small craft refueling dock as defined in Section 8670.3 of the Government Code, or construction site and does not exceed 20,000 gallons in a single storage tank. For the purposes of this part, a drill ship, semisubmersible drilling platform, jack-up type drilling rig, or any other floating or temporary drilling platform is a ''marine facility.''

SEC. 44. Section 46018 of the Revenue and Taxation Code is amended to read:

46018. ''Marine waters'' means those waters subject to tidal influence, and includes the waterways used for waterborne commercial vessel traffic to the Port of Sacramento and the Port of Stockton.

SEC. 45. Section 46027 of the Revenue and Taxation Code is amended to read:

46027. ''State oil spill contingency plan'' means the California oil spill contingency plan prepared pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7 of Division 1 of Title 2 of the Government Code.

SEC. 46. Section 13272 of the Water Code is amended to read:

13272. (a) Except as provided by subdivision (b), any person who, without regard to intent or negligence, causes or permits any oil or petroleum product to be discharged in or on any waters of the state, or discharged or deposited where it is, or probably will be, discharged in or on any waters of the state, shall, as soon as (1) that person has knowledge of the discharge, (2) notification is possible, and (3) notification can be provided without substantially impeding cleanup or other emergency measures, immediately notify the Office of Emergency Services of the discharge in accordance with the spill reporting provision of the California oil spill contingency plan adopted pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7 of Division 1 of Title 2 of the Government Code. This section shall not apply to spills of

oil into marine waters as defined in subdivision (f) of Section 8670.3 of the Government Code.

(b) The notification required by this section shall not apply to a discharge in compliance with waste discharge requirements or other provisions of this division.

(c) Any person who fails to provide the notice required by this section is guilty of a misdemeanor and shall be punished by a fine of not less than five hundred dollars ($500) or more than five thousand dollars ($5,000) per day for each day of failure to notify, or imprisonment of not more than one year, or both. Except where a discharge to the waters of this state would have occurred but for cleanup or emergency response by a public agency, this subdivision shall not apply to any discharge to land which does not result in a discharge to the waters of this state. This subdivision shall not apply to any person who is fined by the federal government for a failure to report a discharge of oil.

(d) Notification received pursuant to this section or information obtained by use of that notification shall not be used against any person providing the notification in any criminal case, except in a prosecution for perjury or giving a false statement.

(e) Immediate notification to the appropriate regional board of the discharge, in accordance with reporting requirements set under Section 13267 or 13383, shall constitute compliance with the requirements of subdivision (a).

(f) The reportable quantity for oil or petroleum products shall be one barrel (42 gallons) or more, by direct discharge to the receiving waters, unless a more restrictive reporting standard for a particular body of water is adopted.

SEC. 47. Section 21.5 of this bill incorporates amendments to Section 8670.25.5 of the Government Code proposed by both this bill and AB 1408. 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 8670.25.5 of the Government Code, and (3) this bill is enacted after AB 1408, in which case Section 21 of this bill shall not become operative.

CHAPTER 797

An act to amend Sections 14526, 14552, 14573, and 14574.1 of, and to add Section 14552.2 to, the Welfare and Institutions Code, relating to adult day health care.

[Approved by Governor September 27, 2004. Filed with Secretary of State September 27, 2004.]

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

SECTION 1. Section 14526 of the Welfare and Institutions Code is amended to read:

14526. Participation in an adult day health care program shall require prior authorization by the department. The authorization request shall be initiated by the provider and shall include the results of the assessment screening conducted by the provider's multidisciplinary team and the resulting individualized plan of care. Participation shall begin upon application by the prospective participant or upon referral from community or health agencies, or the physician, hospital, family, or friends of a potential participant.

SEC. 2. Section 14552 of the Welfare and Institutions Code is amended to read:

14552. In order to obtain certification as a provider of adult day health care under this chapter and Chapter 7 (commencing with Section 14000), the following standards shall be met:

(a) The provider shall have met all other requirements of licensure as an adult day health care center pursuant to Chapter 3.3 (commencing with Section 1570) of Division 2 of the Health and Safety Code.

(b) The provider shall comply with requirements of this chapter regarding program and scope of services.

(c) The provider shall have appropriate licensed personnel.

(d) The provider shall employ required personnel for furnishing of required services pursuant to Section 14550 consistent with commonly accepted professional standards.

(e) The provider shall afford to each participant all rights, including the right to be free from harm and abuse, identified in the rules and regulations adopted pursuant to Section 1580 of the Health and Safety Code.

(f) A provider serving a substantial number of participants of a particular racial or ethnic group, or participants whose primary language is not English, shall employ staff who can meet the cultural and linguistic needs of the participant population.

(g) A provider shall have organizational and administrative capacity to provide services under the provisions of this chapter.

SEC. 3. Section 14552.2 is added to the Welfare and Institutions Code, to read:

14552.2. (a) ''Program plan'' means a written description of the adult day health care center's philosophy, objectives, and processes for providing required services to the participant populations.

(b) The program plan shall include any of the following elements, as requested by the California Department of Aging, and shall be submitted as required in Section 14574.1:

(1) The total number of participants the center proposes to serve, or currently serves, daily.

(2) A profile of the participant population the center proposes to serve, or currently serves, that includes a description of the specific medical, social, and other needs of each population.

(3) A description of the specific program elements and services that addresses the medical, social, and other needs of each participant population that the center proposes to serve, or currently serves, as specified in paragraph (2). ''Program elements'' means the components of an adult day health care program, as specified in Section 14550.

(4) A description of the specialized professional and program staff that will provide, or currently provide, the adult day health care center's program services, as specified in paragraph (3), and that staff's responsibilities. The plan shall demonstrate that the adult day health care center is organized and staffed to carry out the requirements as specified in the regulations adopted pursuant to Section 1580 of the Health and Safety Code.

(5) An in-service training plan for each center staff member to commence within the first six months of employment. The training plan shall address, at a minimum, the specific medical, social, and other needs of each participant population the center proposes to serve, as specified in paragraph (2).

(6) A sample individual plan of care for each specialty population the adult day health care center proposes to serve, or currently serves, and a sample of a one-week schedule of daily program services for each sample individual plan of care. The individual plan of care shall demonstrate the specific medical, social, and other needs of each participant population the adult day health center proposes to serve.

(7) A plan for a behavior modification program if such a program will be used as a basic intervention for meeting the needs of a special population, such as persons with developmental disabilities or persons with mental disabilities.

(c) This section shall be implemented only to the extent funds are made available for the purposes of this section in the annual Budget Act or another statute.

(d) The implementation of the program plan requirements does not require adoption of regulations pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

SEC. 4. Section 14573 of the Welfare and Institutions Code is amended to read:

14573. (a) Initial Medi-Cal certification for adult day health care providers shall expire 12 months from the date of issuance. The director shall specify any date he or she determines is reasonably necessary

because of the record of the applicant and to carry out the purposes of this chapter, but not more than 24 months from the date of issuance, when renewal of the certification shall expire. The certification may be extended for periods of not more than 60 days if the department determines it to be necessary.

(b) Before certification renewal the provider shall submit with the application for renewal a report according to department specifications that includes an analysis of income and expenditures, continued demonstrated community need, services, participant statistics and outcome, and adherence to policies and procedures.

(c) Prior to approving renewal of Medi-Cal certification, the California Department of Aging shall conduct a financial review and onsite medical and management reviews. The reviews shall be conducted by a team of persons with appropriate technical skills. The management review shall be performed by the entity responsible for directing and coordinating the program, as specified in the interagency agreement entered into pursuant to Section 1572 of the Health and Safety Code.

(d) Where the director determines that the public interests would be served thereby, a public hearing may be held on any renewal application subject to this section. The findings of the departmental program and licensing reviews and the provider's annual evaluation report shall be presented at the hearing.

SEC. 5. Section 14574.1 of the Welfare and Institutions Code is amended to read:

14574.1. (a) Every adult day health care center shall be periodically inspected and evaluated for quality of care by a representative or representatives designated by the director, unless otherwise specified in the interagency agreement entered into pursuant to Section 1572 of the Health and Safety Code. Inspections shall be conducted prior to the expiration of certification, but at least every two years, and as often as necessary to ensure the quality of care being provided. As resources permit, an inspection may be conducted prior to, as well as within, the first 90 days of operation.

(b) If, as a result of the inspection, the department or the California Department of Aging, as specified in the interagency agreement, determines that the adult day health care center has serious deficiencies that pose a risk to the health and safety of the participants, the department or the California Department of Aging, as specified in the interagency agreement, may immediately take any of the following actions, including, but not limited to:

(1) Require a plan of correction, including as requested, a program plan pursuant to Section 14552.2.

(2) Limit participant enrollment.

(3) Prohibit new participant enrollment.

(c) The provider shall have the right to dispute an action taken under paragraphs (2) and (3) of subdivision (b). The department or the California Department of Aging, as specified in the interagency agreement, shall accept, consider, and resolve disputes filed pursuant to this subdivision in a timely manner. The dispute resolution process shall be determined by the California Department of Aging in consultation with the department.

(d) The director shall ensure that public records accurately reflect the current status of any potential actions including the resolution of disputes.

CHAPTER 798

An act to amend Section 7596 of the Government Code, to amend Sections 308, 2762, 3326, and 5005 of, and to add Section 5030.1 to, the Penal Code, and to amend Section 1752.5 of, and to add Section 1712.5 to, the Welfare and Institutions Code, relating to tobacco products.

[Approved by Governor September 27, 2004. Filed with Secretary of State September 27, 2004.]

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

SECTION 1. Section 7596 of the Government Code is amended to read:

7596. As used in this chapter:

(a) ''Public building'' means a building owned and occupied, or leased and occupied, by the state, a county, a city, a city and county, or a California Community College district.

(1) ''Inside a public building'' includes all indoor areas of the building, except for covered parking lots and residential space. ''Inside a public building'' also includes any indoor space leased to the state, county, or city, except for covered parking lots and residential space.

(2) ''Residential space'' means a private living area, but it does not include common areas such as lobbies, lounges, waiting areas, elevators, stairwells, and restrooms that are a structural part of a multicomplex building such as a dormitory.

(b) ''State'' or ''state agency'' means a state agency, as defined pursuant to Section 11000, the Legislature, the Supreme Court and the courts of appeal, and each campus of the California State University and the University of California.

(c) ''Public employee'' means an employee of a state agency or an employee of a county or city.

SEC. 2. Section 308 of the Penal Code is amended to read:

308. (a) Every person, firm, or corporation that knowingly or under circumstances in which it has knowledge, or should otherwise have grounds for knowledge, sells, gives, or in any way furnishes to another person who is under the age of 18 years any tobacco, cigarette, or cigarette papers, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, products prepared from tobacco, or any controlled substance, is subject to either a criminal action for a misdemeanor or to a civil action brought by a city attorney, a county counsel, or a district attorney, punishable by a fine of two hundred dollars ($200) for the first offense, five hundred dollars ($500) for the second offense, and one thousand dollars ($1,000) for the third offense.

Notwithstanding Section 1464 or any other provision of law, 25 percent of each civil and criminal penalty collected pursuant to this subdivision shall be paid to the office of the city attorney, county counsel, or district attorney, whoever is responsible for bringing the successful action, and 25 percent of each civil and criminal penalty collected pursuant to this subdivision shall be paid to the city or county for the administration and cost of the community service work component provided in subdivision (b).

Proof that a defendant, or his or her employee or agent, demanded, was shown, and reasonably relied upon evidence of majority shall be defense to any action brought pursuant to this subdivision. Evidence of majority of a person is a facsimile of or a reasonable likeness of a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operator's license, a registration certificate issued under the Federal Selective Service Act, or an identification card issued to a member of the armed forces.

For purposes of this section, the person liable for selling or furnishing tobacco products to minors by a tobacco vending machine shall be the person authorizing the installation or placement of the tobacco vending machine upon premises he or she manages or otherwise controls and under circumstances in which he or she has knowledge, or should otherwise have grounds for knowledge, that the tobacco vending machine will be utilized by minors.

(b) Every person under the age of 18 years who purchases, receives, or possesses any tobacco, cigarette, or cigarette papers, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking of tobacco, products prepared from tobacco,

or any controlled substance shall, upon conviction, be punished by a fine of seventy-five dollars ($75) or 30 hours of community service work.

(c) Every person, firm, or corporation which sells, or deals in tobacco or any preparation thereof, shall post conspicuously and keep so posted in his, her, or their place of business at each point of purchase the notice required pursuant to subdivision (b) of Section 22952 of the Business and Professions Code, and any person failing to do so shall upon conviction be punished by a fine of ten dollars ($10) for the first offense and fifty dollars ($50) for each succeeding violation of this provision, or by imprisonment for not more than 30 days.

(d) For purposes of determining the liability of persons, firms, or corporations controlling franchises or business operations in multiple locations for the second and subsequent violations of this section, each individual franchise or business location shall be deemed a separate entity.

(e) It is the Legislature's intent to regulate the subject matter of this section. As a result, no city, county, or city and county shall adopt any ordinance or regulation inconsistent with this section.

SEC. 3. Section 2762 of the Penal Code is amended to read:

2762. The Director of Corrections shall fix a daily rate to be expended for convict labor, and when so fixed, the Department of Transportation shall monthly set aside funds to the director to pay for this labor from funds appropriated in the Budget Act for this purpose, and where no funds are available to the Department of Transportation the director may set aside the department's own funds to pay for this labor from funds appropriated in the Budget Act for this purpose. The Department of Corrections shall set up an account for each convict which shall be credited monthly with an amount computed by multiplying the daily rate by the number of days such convict actually performed labor during the month. Such account shall be debited monthly with the convict's proportionate share of expenses of camp maintenance, including the expenses for food, medicine, medical attendance, clerical and accounting personnel, and the expenses necessary to maintain care and welfare facilities such as camp hospital for first aid, barbershop and cobbler shop, and the convict's personal expenses covering his drawings from the commissary for clothing, toilet articles, candy, and other personal items. The charge for camp maintenance may be made at a standard rate determined by the department maintaining the camps to be adequate to cover expenses and shall be adjusted periodically at the discretion of the department as needs of the camp require. No charge shall be made against such account for the costs of transporting prisoners to and from prison and camp or for the expense of guarding prisoners, which items shall be paid by the Department of Corrections from appropriations made for the support of the department. The director, by

regulation, may fix the maximum amount, over and above all deductions, that a convict may receive. The Department of Corrections, in computing the debits to be made to the convict's accounts, may add not to exceed 10 percent on all items.

SEC. 4. Section 3326 of the Penal Code is amended to read:

3326. The department is authorized to provide the necessary facilities, equipment, and personnel to operate a commissary at any institution under its jurisdiction for the sale of toilet articles, candy, gum, notions, and other sundries.

SEC. 5. Section 5005 of the Penal Code is amended to read:

5005. The department may maintain a canteen at any prison or institution under its jurisdiction for the sale to persons confined therein of toilet articles, candy, notions, and other sundries, and may provide the necessary facilities, equipment, personnel, and merchandise for the canteen. The director shall specify what commodities shall be sold in the canteen. The sale prices of the articles offered for sale shall be fixed by the director at the amounts that will, as far as possible, render each canteen self-supporting. The department may undertake to insure against damage or loss of canteen and handicraft materials, supplies and equipment owned by the Inmate Welfare Fund of the Department of Corrections as provided in Section 5006.

The canteen operations at any prison or institution referred to in this section shall be audited biennially by the Department of Finance, and at the end of each intervening fiscal year, each prison or institution shall prepare a statement of operations. At least one copy of any audit report or statement of operations shall be posted at the canteen and at least one copy shall be available to inmates at the library of each prison or institution.

SEC. 6. Section 5030.1 is added to the Penal Code, to read:

5030.1. (a) The possession or use of tobacco products by inmates under the jurisdiction of the Department of Corrections is prohibited. The Director of Corrections shall adopt regulations to implement this prohibition, which shall include an exemption for departmentally approved religious ceremonies.

(b) The use of tobacco products by any person not included in subdivision (a) on the grounds of any institution or facility under the jurisdiction of the Department of Corrections is prohibited, with the exception of residential staff housing where inmates are not present.

SEC. 7. Section 1712.5 is added to the Welfare and Institutions Code, to read:

1712.5. (a) The possession or use of tobacco products by wards and inmates in all institutions and camps under the jurisdiction of the Department of the Youth Authority is prohibited. The Director of the Youth Authority shall adopt regulations to implement this prohibition,

which shall include an exemption for departmentally approved religious ceremonies.

(b) The use of tobacco products by any person not included in subdivision (a) on the grounds of any institution or facility under the jurisdiction of the Department of the Youth Authority is prohibited, with the exception of residential staff housing where inmates or wards are not present.

SEC. 8. Section 1752.5 of the Welfare and Institutions Code is amended to read:

1752.5. The director may establish and maintain at any institution or camp under his jurisdiction a canteen for the sale to persons confined therein of candy, nutritional snacks, toilet articles, sundries, and other articles. The canteen shall operate on a nonprofit basis. However, if sales should exceed costs, the surplus shall be deposited in a special fund, to be designated ''Benefit Fund.'' Any moneys contained in such fund shall be used for the benefit of the wards resident at the institution or camp.

SEC. 9. This act shall become operative on July 1, 2005.

CHAPTER 799

An act to amend Section 830.34 of the Penal Code, and to add Section 71341.5 to the Water Code, relating to water, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 2004. Filed with Secretary of State September 27, 2004.]

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

SECTION 1. Section 830.34 of the Penal Code is amended to read:

830.34. 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) Persons designated as a security officer by a municipal utility district pursuant to Section 12820 of the Public Utilities Code, if the primary duty of the officer is the protection of the properties of the utility district and the protection of the persons thereon.

(b) Persons designated as a security officer by a county water district pursuant to Section 30547 of the Water Code, if the primary duty of the officer is the protection of the properties of the county water district and the protection of the persons thereon.

(c) The security director of the public utilities commission of a city and county, if the primary duty of the security director is the protection of the properties of the commission and the protection of the persons thereon.

(d) Persons employed as a park ranger by a municipal water district pursuant to Section 71341.5 of the Water Code, if the primary duty of the park ranger is the protection of the properties of the municipal water district and the protection of the persons thereon.

SEC. 2. Section 71341.5 is added to the Water Code, to read:

71341.5. (a) A district may employ park rangers who shall have the authority and powers conferred by subdivision (d) of Section 830.34 of the Penal Code upon peace officers.

(b) For the purposes of carrying out subdivision (a), the district shall adhere to the standards for recruitment and training of peace officers established by the Commission on Peace Officer Standards and Training pursuant to Title 4 (commencing with Section 13500) of Part 4 of the Penal Code.

(c) Every park ranger employed by a district shall conform to the standards for peace officers adopted by the Commission on Peace Officer Standards and Training. Any park ranger who fails to conform to those standards shall not have the powers of a peace officer.

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 grant essential authority to municipal water districts, as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 800

An act to amend Section 1274.10 of the Unemployment Insurance Code, relating to employment training.

[Approved by Governor September 27, 2004. Filed with Secretary of State September 27, 2004.]

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

SECTION 1. Section 1274.10 of the Unemployment Insurance Code is amended to read:

1274.10. 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 chaptered before that date, deletes or extends the date.

CHAPTER 801

An act to amend Sections 13369, 15250, and 15275 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 27, 2004. Filed with Secretary of State September 27, 2004.]

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

SECTION 1. Section 13369 of the Vehicle Code is amended to read:

13369. (a) This section applies to the following endorsements and certificates:

(1) Passenger transportation vehicle.

(2) Hazardous materials.

(3) Schoolbus.

(4) School pupil activity bus.

(5) Youth bus.

(6) General public paratransit vehicle.

(7) Farm labor vehicle.

(8) Vehicle used for the transportation of developmentally disabled persons.

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

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

(2) Within the preceding three years, has had his or her driving privilege suspended, revoked, or on probation for any reason involving

unsafe operation of a motor vehicle. The department may not refuse to issue or renew, nor may it revoke, a person's passenger transportation vehicle endorsement if the person's driving privilege has, within the preceding three years, been placed on probation only for any reason involving unsafe operation of a motor vehicle, or if Section 13353.6 applies.

(3) Notwithstanding paragraphs (1) and (2), does not meet the qualifications for issuance of a hazardous materials endorsement set forth in Parts 383, 384, and 1572 of Title 49 of the Code of Federal Regulations.

(c) The department may refuse to issue or renew, or may suspend or revoke the certificate or endorsement of a person who meets any of the following conditions:

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

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

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

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

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

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

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

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

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

(d) The department may cancel the certificate or endorsement of any driver who meets any of the following conditions:

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

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

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

and fingerprint cards, and failure to meet prescribed training requirements.

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

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

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

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

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

SEC. 1.5. Section 13369 of the Vehicle Code is amended to read:

13369. (a) This section applies to the following endorsements and certificates:

(1) Passenger transportation vehicle.

(2) Hazardous materials.

(3) Schoolbus.

(4) School activity bus.

(5) Youth bus.

(6) General public paratransit vehicle.

(7) Farm labor vehicle.

(8) Vehicle used for the transportation of developmentally disabled persons.

(b) The department shall refuse to issue or renew, or shall revoke the certificate or endorsement of any person who meets the following conditions:

(1) Within the preceding three years, has committed any violation that results in a conviction assigned a violation point count of two or more, as defined in Sections 12810 and 12810.5. The department shall not refuse to issue or renew, nor shall it revoke, a person's hazardous

materials or passenger transportation vehicle endorsement if the violation leading to the conviction occurred in the person's private vehicle and not in a commercial motor vehicle, as defined in Section 15210.

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

(3) Notwithstanding paragraphs (1) and (2), does not meet the qualifications for issuance of a hazardous materials endorsement set forth in Parts 383, 384, and 1572 of Title 49 of the Code of Federal Regulations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) This section shall become operative on September 20, 2005.

SEC. 2. Section 15250 of the Vehicle Code is amended to read:

15250. (a) (1) A person may not operate a commercial motor vehicle unless that person has in his or her immediate possession a valid commercial driver's license of the appropriate class.

(2) A person may not operate a commercial motor vehicle while transporting hazardous materials unless that person has in his or her possession a valid commercial driver's license with a hazardous materials endorsement. An instruction permit does not authorize the operation of a vehicle transporting hazardous materials.

(b) (1) Before an application for an original or renewal of a commercial driver's license with a hazardous materials endorsement is submitted to the United States Transportation Security Administration for the processing of a security threat assessment, as required under Part 1572 of Title 49 of the Code of Federal Regulations, the department shall

complete a check of the applicant's driving record to ensure that the person is not subject to a disqualification under Part 383.51 of Title 49 of the Code of Federal Regulations.

(2) A person may not be issued a commercial driver's license until he or she has passed a written and driving test for the operation of a commercial motor vehicle which complies with the minimum federal standards established by the federal Commercial Motor Vehicle Safety Act of 1986 (P.L. 99-570) and Part 383 of Title 49 of the Code of Federal Regulations, and has satisfied all other requirements of that act as well as any other requirements imposed by this code.

(c) The tests shall be prescribed and conducted by or under the direction of the department. The department may allow a third-party tester to administer the driving test part of the examination required under this section and Section 15275 if all of the following conditions are met:

(1) The tests given by the third party are the same as those that would otherwise be given by the department.

(2) The third party has an agreement with the department including, but not limited to, the following provisions:

(A) Authorization for the United States Secretary of Transportation, or his or her representative, and the department, or its representative, to conduct random examinations, inspections, and audits without prior notice.

(B) Permission for the department, or its representative, to conduct onsite inspections at least annually.

(C) A requirement that all third-party testers meet the same qualification and training standards as the department's examiners, to the extent necessary to conduct the driving skill tests in compliance with the requirements of Part 383 of Title 49 of the Code of Federal Regulations.

(D) The department may cancel, suspend, or revoke the agreement with a third-party tester if the third-party tester fails to comply with the standards for the commercial driver's license testing program, or with any other term of the third-party agreement, upon 15 days prior written notice of the action to cancel, suspend, or revoke the agreement by the department to the third party. Any action to appeal or review any order of the department canceling, suspending, or revoking a third-party testing agreement shall be brought in a court of competent jurisdiction under Section 1085 of the Code of Civil Procedure, or as otherwise permitted by the laws of this state. The action shall be commenced within 90 days from the effective date of the order.

(E) Any third-party tester whose agreement has been canceled pursuant to subparagraph (D) may immediately apply for a third-party testing agreement.

(F) A suspension of a third-party testing agreement pursuant to subparagraph (D) shall be for a term of less than 12 months as determined by the department. After the period of suspension, the agreement shall be reinstated upon request of the third-party tester.

(G) A revocation of a third-party testing agreement pursuant to subparagraph (D) shall be for a term of not less than one year. A third-party tester may apply for a new third-party testing agreement after the period of revocation and upon submission of proof of correction of the circumstances causing the revocation.

(H) Authorization for the department to charge the third-party tester a fee, as determined by the department, which is sufficient to defray the actual costs incurred by the department for administering and evaluating the third-party testing program, and for carrying out any other activities deemed necessary by the department to ensure sufficient training for the drivers participating in the program.

(3) Except as provided in Section 15250.3, the tests given by the third party shall not be accepted in lieu of tests prescribed and conducted by the department for applicants for a passenger vehicle endorsement specified in paragraph (2) of subdivision (a) of Section 15278, if the applicant operates or will operate a tour bus.

(d) Commercial driver's license applicants who take and pass driving tests administered by a third party shall provide the department with certificates of driving skill satisfactory to the department that the applicant has successfully passed the driving tests administered by the third party.

(e) Implementation dates for the issuance of a commercial driver's license pursuant to this chapter may be established by the department as it determines is necessary to accomplish an orderly commercial driver's license program.

SEC. 3. Section 15275 of the Vehicle Code is amended to read:

15275. (a) A person may not operate a commercial motor vehicle described in this chapter unless that person has in his or her possession a valid commercial driver's license for the appropriate class, and an endorsement issued by the department to permit the operation of the vehicle unless exempt from the requirement to obtain an endorsement pursuant to subdivision (b) of Section 15278.

(b) (1) An endorsement to drive vehicles specified in this article shall be issued only to applicants qualified by examinations prescribed by the department and who meet the minimum standards established in Part 383 of Title 49 of the Code of Federal Regulations.

(2) A hazardous materials endorsement shall be issued only to applicants who comply with paragraph (1) and the requirements set forth in Part 1572 of Title 49 of the Code of Federal Regulations.

(c) The department may deny, suspend, revoke, or cancel an endorsement to drive vehicles specified in this article when the applicant does not meet the qualifications for the issuance or retention of the endorsement.

(d) If the department denies, suspends, revokes, or cancels a hazardous materials endorsement because the department received notification that the applicant poses a security threat pursuant to Part 1572 of Title 49 of the Code of Federal Regulations and, upon appeal by the United States Transportation Security Administration, that endorsement is ordered reinstated, the department shall issue or restore the hazardous materials endorsement to the applicant within the period specified under those federal regulations.

SEC. 4. Section 1.5 of this bill incorporates amendments to Section 13369 of the Vehicle Code proposed by both this bill and AB 3049. 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 13369 of the Vehicle Code, and (3) this bill is enacted after AB 3049, in which case Section 13369 of the Vehicle Code, as amended by Section 1 of this bill, shall be operative only until September 20, 2005, at which time Section 1.5 of this bill shall become operative.

CHAPTER 802

An act to amend Section 12101.5 of the Public Contract Code, relating to state contracts.

[Approved by Governor September 27, 2004. Filed with Secretary of State September 27, 2004.]

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

SECTION 1. Section 12101.5 of the Public Contract Code is amended to read:

12101.5. (a) It is the intent of the Legislature that agencies of the state use an acquisition method that is compatible with their short- and long-term fiscal needs in contracts relating to commodities and information technology goods and services. State agencies should be able to specify their anticipated life cycle requirements that would become one of the criteria for contractor selection. These agencies should be given the choice of suppliers to meet statewide standardization needs, unique service requirements, application requirements, and long-term satisfaction criteria. There is a need for the state to enter into long-term contracts with annual cancellation and fund-out clauses, as

required, to protect the state's interests as well as provide the option for multiyear renewals to encourage suppliers to develop higher levels of service and support throughout the contracts.

(b) The state may utilize multiple awards, including federal General Service Administration Multiple Awards Schedules and master agreements or contracts for goods, information technology, services, or consulting services. For purposes of this subdivision, a multiple award is an award of an indefinite quantity contract for one or more similar goods, information technology, or services to more than one supplier. Except for possible multiple awards as permitted by this subdivision, and except as described in subdivision (d), all the requirements of this chapter pertaining to other types of information technology acquisitions shall be followed. The department shall ensure that multiple award schedules are in compliance with all other applicable statutes.

(c) Notwithstanding any other provision of law, state agencies, in exercising their contracting authority delegated by the department, may contract with suppliers who have multiple award schedules with the General Services Administration of the United States on the same terms, conditions, and prices if the supplier is willing to do so. The department may also develop multiple award schedules or agreements for use by state agencies in the same manner. The department shall determine the delegation contracting authority for agencies wishing to use multiple award schedules.

(d) For contracts related to information technology integration or development projects that generate revenues or achieve savings over a quantifiable baseline of existing costs, state agencies shall consider and may incorporate performance-based or share-in-savings contract terms to manage risks and create incentives for successful contract performance. Performance-based or share-in-savings contracts may have the following characteristics, among others:

(1) Contract terms that specify business outcomes to be achieved, not the solution to be provided.

(2) Contract terms that structure the contract to maintain maximum vendor commitment to project success and minimize risk to the state by sharing risk with the private sector.

(3) Utilization of ''best value'' evaluation methods, which means to select the solution that will achieve the best result based on business performance measures, not necessarily the lowest price.

(4) Contract terms that base payments to the vendor primarily on achieving predefined performance measures.

CHAPTER 803

An act to amend Section 10127.10 of the Insurance Code, relating to life insurance.

[Approved by Governor September 27, 2004. Filed with Secretary of State September 27, 2004.]

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

SECTION 1. Section 10127.10 of the Insurance Code is amended to read:

10127.10. (a) Every policy of individual life insurance and every individual annuity contract that is initially delivered or issued for delivery to a senior citizen in this state on and after July 1, 2004, shall have printed thereon or attached thereto a notice stating that, after receipt of the policy by the owner, the policy may be returned by the owner for cancellation by delivering it or mailing it to the insurer or agent from whom it was purchased. The period of time set forth by the insurer for return of the policy by the owner shall be clearly stated on the notice and this period shall be not less than 30 days. The owner may return the policy to the insurer by mail or otherwise at any time during the period specified in the notice. During the 30-day cancellation period, the premium for a variable annuity may be invested only in fixed-income investments and money-market funds, unless the investor specifically directs that the premium be invested in the mutual funds underlying the variable annuity contract. Return of the policy within the 30-day cancellation period shall have one of the following effects:

(1) In the case of individual life insurance policies and variable annuity contracts for which the owner has not directed that the premium be invested in the mutual funds underlying the contract during the cancellation period, return of the policy during the cancellation period shall have the effect of voiding the policy from the beginning, and the parties shall be in the same position as if no policy had been issued. All premiums paid and any policy fee paid for the policy shall be refunded by the insurer to the owner within 30 days from the date that the insurer is notified that the owner has canceled the policy. The premium and policy fee shall be refunded by the insurer to the owner within 30 days from the date that the insurer is notified that the owner has canceled the policy.

(2) In the case of a variable annuity for which the owner has directed that the premium be invested in the mutual funds underlying the contract during the 30-day cancellation period, cancellation shall entitle the owner to a refund of the account value. The account value shall be

refunded by the insurer to the owner within 30 days from the date that the insurer is notified that the owner has canceled the contract.

(b) This section applies to all individual policies issued or delivered to senior citizens in this state on or after January 1, 2004. All policies subject to this section which are in effect on January 1, 2003, shall be construed to be in compliance with this section, and any provision in any policy which is in conflict with this section shall be of no force or effect.

(c) Every individual life insurance policy and every individual annuity contract, other than variable contracts and modified guaranteed contracts, subject to this section, that is delivered or issued for delivery in this state shall have the following notice either printed on the cover page or policy jacket in 12-point bold print with one inch of space on all sides or printed on a sticker that is affixed to the cover page or policy jacket:

''IMPORTANT

YOU HAVE PURCHASED A LIFE INSURANCE POLICY OR ANNUITY CONTRACT. CAREFULLY REVIEW IT FOR LIMITATIONS.

THIS POLICY MAY BE RETURNED WITHIN 30 DAYS FROM THE DATE YOU RECEIVED IT FOR A FULL REFUND BY RETURNING IT TO THE INSURANCE COMPANY OR AGENT WHO SOLD YOU THIS POLICY. AFTER 30 DAYS, CANCELLATION MAY RESULT IN A SUBSTANTIAL PENALTY, KNOWN AS A SURRENDER CHARGE.''

The phrase ''after 30 days, cancellation may result in a substantial penalty, known as a surrender charge'' may be deleted if the policy does not contain those charges or penalties.

(d) Every individual variable annuity contract, variable life insurance contract, or modified guaranteed contract subject to this section, that is delivered or issued for delivery in this state, shall have the following notice either printed on the cover page or policy jacket in 12-point bold print with one inch of space on all sides or printed on a sticker that is affixed to the cover page or policy jacket:

''IMPORTANT

YOU HAVE PURCHASED A VARIABLE ANNUITY CONTRACT (VARIABLE LIFE INSURANCE CONTRACT, OR MODIFIED GUARANTEED CONTRACT). CAREFULLY REVIEW IT FOR

LIMITATIONS.

THIS POLICY MAY BE RETURNED WITHIN 30 DAYS FROM THE DATE YOU RECEIVED IT. DURING THAT 30-DAY PERIOD, YOUR MONEY WILL BE PLACED IN A FIXED ACCOUNT OR MONEY-MARKET FUND, UNLESS YOU DIRECT THAT THE PREMIUM BE INVESTED IN A STOCK OR BOND PORTFOLIO UNDERLYING THE CONTRACT DURING THE 30-DAY PERIOD. IF YOU DO NOT DIRECT THAT THE PREMIUM BE INVESTED IN A STOCK OR BOND PORTFOLIO, AND IF YOU RETURN THE POLICY WITHIN THE 30-DAY PERIOD, YOU WILL BE ENTITLED TO A REFUND OF THE PREMIUM AND POLICY FEES. IF YOU DIRECT THAT THE PREMIUM BE INVESTED IN A STOCK OR BOND PORTFOLIO DURING THE 30-DAY PERIOD, AND IF YOU RETURN THE POLICY DURING THAT PERIOD, YOU WILL BE ENTITLED TO A REFUND OF THE POLICY'S ACCOUNT VALUE ON THE DAY THE POLICY IS RECEIVED BY THE INSURANCE COMPANY OR AGENT WHO SOLD YOU THIS POLICY, WHICH COULD BE LESS THAN THE PREMIUM YOU PAID FOR THE POLICY. A RETURN OF THE POLICY AFTER 30 DAYS MAY RESULT IN A SUBSTANTIAL PENALTY, KNOWN AS A SURRENDER CHARGE.''

The words ''known as a surrender charge'' may be deleted if the contract does not contain those charges.

(e) This section does not apply to life insurance policies issued in connection with a credit transaction or issued under a contractual policy-change or conversion privilege provision contained in a policy. Additionally, this section shall not apply to contributory and noncontributory employer group life insurance, contributory and noncontributory employer group annuity contracts, and group term life insurance, with the exception of subdivision (f).

(f) When an insurer, its agent, group master policyowner, or association collects more than one month's premium from a senior citizen at the time of application or at the time of delivery of a group term life insurance policy or certificate, the insurer must provide the senior citizen a prorated refund of the premium if the senior citizen delivers a cancellation request to the insurer during the first 30 days of the policy period.

(g) For purposes of this chapter, a senior citizen means an individual who is 60 years of age or older on the date of purchase of the policy.

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CHAPTER 804

An act to amend Section 699.5 of, and to add Section 699.1 to, the Military and Veterans Code, relating to veterans.

[Approved by Governor September 27, 2004. Filed with Secretary of State September 27, 2004.]

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

SECTION 1. Section 699.1 is added to the Military and Veterans Code, to read:

699.1. (a) The processing of claims for veterans and their dependents and survivors shall include the filing of the initial claim, the representation of the claimant before boards and offices of the United States Department of Veterans Affairs, and the filing of appeals related to the claims.

(b) The claims may include the following types of benefits and services:

(1) Disability compensation benefits.
(2) Disability pension benefits.
(3) Dependents' indemnity compensation.
(4) Widow's death pension.
(5) Burial benefits.
(6) Confirmed and continued claims.
(7) Vocational rehabilitation and education.
(8) Waivers of indebtedness.
(9) Other benefits that result in monetary awards to the claimant.

SEC. 2. Section 699.5 of the Military and Veterans Code is amended to read:

699.5. (a) The department may assist every veteran of the United States and the dependent or survivor of every veteran of the United States in presenting and pursuing the claim as the veteran, dependent, or survivor may have against the United States arising out of war service and in establishing the veteran's, dependent's, or survivor's right to any privilege, preference, care, or compensation provided for by the laws of the United States or of this state. The department may cooperate and, with the approval of the Department of Finance, contract with any veterans service organization, and pursuant to the contract may compensate the organization for services within the scope of this section rendered by it to any veteran or dependent or survivor of a veteran. The contract shall not be made unless the department determines that, owing to the confidential relationships involved and the necessity of operating through agencies that the veterans, dependents, or survivors involved will fail to be sympathetic towards their problems, the services cannot

satisfactorily be rendered otherwise than through the agency of the veterans organization and that the best interests of the veterans, dependents, or survivors involved will be served if the contract is made.

(b) (1) The Legislature finds and declares that services provided by veteran service organizations play an important role in the department's responsibilities to assist veterans and their dependents and survivors in presenting and pursuing claims against the United States, and that it is an efficient and reasonable use of state funds to provide compensation to veterans service organizations for these services.

(2) The Legislature further finds and declares that paragraph (1) of this subdivision shall not be implemented by using the General Fund until an increase in the annual budget for county veteran services officers, described in paragraph (2) of subdivision (d) of Section 972.1, has been achieved. This subdivision may not be construed to preclude the use of federal funding in implementing these provisions.

(c) Veterans service organizations, that elect to contract with the department in accordance with this section, shall document the claims processed each year by the veterans service officers employed by the veterans service organization at offices located in California. The documentation shall be in accordance with procedures established by the department.

(d) The department shall determine annually the amount of monetary benefits paid to eligible veterans and their dependents and survivors in the state as a result of the work of the veterans service officers of the contracting organizations. Beginning on January 1, 2006, the department shall, on or before January 1 of each year, prepare and transmit its determination for the preceding fiscal year to the Department of Finance and the Legislature. The department shall also identify federal sources to support the efforts of veterans service organizations pursuant to this section. The Department of Finance shall review the department's determination in time to use the information in the annual Budget Act for the budget of the department for the next fiscal year.

(e) For the purposes of this section:

(1) ''Survivor'' means any relation of a deceased veteran who may be entitled to make a claim for any privilege, preference, care, or compensation under the laws of the United States or this state based upon the veteran's war service.

(2) ''Veterans service officer'' means an individual employed by a veterans service organization and accredited by the United States Department of Veterans Affairs to process and adjudicate claims and other benefits for veterans and their dependents and survivors.

(3) ''Veterans service organization'' means an organization that meets all of the following criteria:

(A) Is formed by and for United States military veterans.

(B) Is chartered by the United States Congress.

(C) Has regularly maintained an established committee or agency in a regional office of the United States Department of Veterans Affairs in California rendering services to veterans and their dependents and survivors.

CHAPTER 805

An act relating to local agency reorganization.

[Approved by Governor September 27, 2004. Filed with Secretary of State September 27, 2004.]

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

SECTION 1. Notwithstanding any other provision of law, on or before December 31, 2007, the local agency formation commission in the County of Ventura shall not impose a condition that requires the City of Simi Valley to initiate proceedings on a proposal for a change of organization or reorganization pursuant to paragraph (3) of subdivision (a) of Section 56375 of the Government Code or pursuant to Section 56375.3 of the Government Code unless the territory that would be affected is contiguous and physically related to the affected territory.

SEC. 2. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances of the City of Simi Valley. The facts constituting the special circumstances are:

There are seven areas of unincorporated territory that are surrounded or substantially surrounded by the City of Simi Valley. The city intends to explore the possibility of annexing those unincorporated territories over the next two years. The Legislature wants to allow city officials, property owners, and residents to discuss those possible annexations without undue influence.

CHAPTER 806

An act to amend Sections 5237, 17306, 17500, 17502, 17506, and 17522.5 of, and to add Section 17309.5 to, and Article 1.5 (commencing with Section 17450) to Chapter 2 of Division 17 of, the Family Code, to add Section 24351.5 to the Government Code, and to add Sections

19270 and 19276 to, and to repeal Article 5 (commencing with Section 19271) of Chapter 5 of Part 10.2 of Division 2 of, the Revenue and Taxation Code, relating to child support.

[Approved by Governor September 27, 2004. Filed with Secretary of State September 27, 2004.]

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

SECTION 1. Section 5237 of the Family Code is amended to read:

5237. (a) Except as provided in subdivisions (b) and (c), the obligee shall notify the employer of the obligor, by first-class mail, postage prepaid, of any change of address within a reasonable period of time after the change.

(b) Where payments have been ordered to be made to a county officer designated by the court, the obligee who is the parent, guardian, or other person entitled to receive payment through the designated county officer shall notify the designated county officer by first-class mail, postage prepaid, of any address change within a reasonable period of time after the change.

(c) If the obligee is receiving support payments from the State Disbursement Unit as required by Section 17309, the obligee shall notify the State Disbursement Unit instead of the employer of the obligor as provided in subdivision (a).

(d) (1) Except as set forth in paragraph (2), if the employer, designated county officer, or the State Disbursement Unit is unable to deliver payments under the assignment order for a period of six months due to the failure of the obligee to notify the employer, designated county officer, or State Disbursement Unit, of a change of address, the employer, designated county officer, or State Disbursement Unit shall not make any further payments under the assignment order and shall return all undeliverable payments to the obligor.

(2) If payments are being directed to the State Disbursement Unit pursuant to subdivision (e) of Section 5235, but the case is not otherwise receiving services from the Title IV-D agency, and the State Disbursement Unit is unable to deliver payments under the assignment order for a period of 45 days due to the failure of the obligee to notify the employer, designated county officer, or State Disbursement Unit of a change of address, the Title IV-D agency shall take the following actions:

(A) Immediately return the undeliverable payments to the obligor if the obligee cannot be located.

(B) Notify the employer to suspend withholding pursuant to the wage assignment until the employer or Title IV-D agency is notified of the obligee's whereabouts.

SEC. 2. Section 17306 of the Family Code is amended to read:

17306. (a) The Legislature finds and declares all of the following:

(1) While the State Department of Social Services has had statutory authority over the child support system, the locally elected district attorneys have operated their county programs with a great deal of autonomy.

(2) District attorneys have operated the child support programs with different forms, procedures and priorities, making it difficult to adequately evaluate and modify performance statewide.

(3) Problems collecting child support reflect a fundamental lack of leadership and accountability in the collection program. These management problems have cost California taxpayers and families billions of dollars.

(b) The director shall develop uniform forms, policies and procedures to be employed statewide by all local child support agencies. Pursuant to this subdivision, the director shall:

(1) Adopt uniform procedures and forms.

(2) Establish standard caseworker to case staffing ratios, adjusted as appropriate to meet the varying needs of local programs.

(3) Establish standard attorney to caseworker ratios, adjusted as appropriate to meet the varying needs of local programs.

(4) Institute a consistent statewide policy on the appropriateness of closing cases to ensure that, without relying solely on federal minimum requirements, all cases are fully and pragmatically pursued for collections prior to closing.

(5) Evaluate the best practices for the establishment, enforcement, and collection of child support, for the purpose of determining which practices should be implemented statewide in an effort to improve performance by local child support agencies. In evaluating the best practices, the director shall review existing practices in better performing counties within California, as well as practices implemented by other state Title IV-D programs nationwide.

(6) Evaluate the best practices for the management of effective child support enforcement operations for the purpose of determining what management structure should be implemented statewide in an effort to improve the establishment, enforcement, and collection of child support by local child support agencies, including an examination of the need for attorneys in management level positions. In evaluating the best practices, the director shall review existing practices in better performing counties within California, as well as practices implemented by other state Title IV-D programs nationwide.

(7) Set priorities for the use of specific enforcement mechanisms for use by both the local child support agency and the Franchise Tax Board. As part of establishing these priorities, the director shall set forth

caseload processing priorities to target enforcement efforts and services in a way that will maximize collections and avoid welfare dependency.

(8) Develop uniform training protocols, require periodic training of all child support staff, and conduct training sessions as appropriate.

(9) Review and approve annual budgets submitted by the local child support agencies to ensure each local child support agency operates an effective and efficient program that complies with all federal and state laws, regulations, and directives, including the directive to hire sufficient staff.

(c) The director shall submit any forms intended for use in court proceedings to the Judicial Council for approval at least six months prior to the implementation of the use of the forms.

(d) In adopting the forms, policies, and procedures, the director shall consult with the California Family Support Council, the California State Association of Counties, labor organizations, custodial and noncustodial parent advocates, child support commissioners, family law facilitators, and the appropriate committees of the Legislature.

(e) (1) Notwithstanding the provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, through December 31, 2007, the department may implement the applicable provisions of this division through child support services letters or similar instructions from the director.

The department shall adopt regulations implementing the forms, policies, and procedures established pursuant to this section. The director may delay implementation of any of these regulations in any county for any time as the director deems necessary for the smooth transition and efficient operation of a local child support agency, but implementation shall not be delayed beyond the time at which the transition to the new county department of child support services is completed. The department may adopt regulations to implement this division in accordance with the Administrative Procedure Act. The adoption of any emergency regulation filed with the Office of Administrative Law on or before December 31, 2007, shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety or general welfare. These emergency regulations shall remain in effect for no more than 180 days.

(2) It is the intent of the Legislature that the amendments to paragraph (1) of this subdivision made by Assembly Bill 3032 of the 2001–02 Regular Session shall be retroactive to June 30, 2002.

SEC. 3. Section 17309.5 is added to the Family Code, to read:

17309.5. (a) An employer who is required to withhold and, by electronic fund transfer, pay tax pursuant to Section 19011 of the Revenue and Taxation Code or Section 13021 of the Unemployment

Insurance Code, shall make child support payments to the State Disbursement Unit by electronic fund transfer. All child support payments required to be made to the State Disbursement Unit shall be remitted to the State Disbursement Unit by electronic fund transfer pursuant to Division 11 (commencing with Section 11101) of the Commercial Code.

(b) An employer not required to make payment to the State Disbursement Unit pursuant to paragraph (a), may elect to make payment by electronic fund transfer under the following conditions:

(1) The election shall be made in a form, and shall contain information, as prescribed by the Director of the Department of Child Support Services, and shall be subject to approval of the department.

(2) The election may be terminated upon written request to the Department of Child Support Services.

(c) For the purposes of this section:

(1) ''Electronic fund transfer'' means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape, so as to order, instruct, or authorize a financial institution to debit or credit an account. Electronic fund transfers shall be accomplished by an automated clearinghouse debit, an automated clearinghouse credit, or by Federal Reserve Wire Transfer (Fedwire).

(2) ''Automated clearinghouse'' means any federal reserve bank, or an organization established in agreement with the National Automated Clearinghouse Association, that operates as a clearinghouse for transmitting or receiving entries between banks or bank accounts and which authorizes an electronic transfer of funds between these banks or bank accounts.

(3) ''Automated clearinghouse debit'' means a transaction in which the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the person's bank account and crediting the state's bank account for the amount of tax. Banking costs incurred for the automated clearinghouse debit transaction shall be paid by the state.

(4) ''Automated clearinghouse credit'' means an automated clearinghouse transaction in which the person through his or her own bank, originates an entry crediting the state's bank account and debiting his or her own bank account. Banking costs incurred for the automated clearinghouse credit transaction charged to the state shall be paid by the person originating the credit.

(5) ''Fedwire transfer'' means any transaction originated by a person and utilizing the national electronic payment system to transfer funds through the federal reserve banks, when that person debits his or her own

bank account and credits the state's bank account. Electronic fund transfers pursuant to this section may be made by Fedwire only if payment cannot, for good cause, be made according to subdivision (a), and the use of Fedwire is preapproved by the department. Banking costs incurred for the Fedwire transaction charged to the person and to the state shall be paid by the person originating the transaction.

SEC. 4. 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 department and the local child support agency shall have the responsibility for promptly and effectively collecting and enforcing child support obligations.

(b) The department and the local child support agency are the public agencies 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 Section 17450, the local child support agency shall submit child support delinquencies to the department for purposes of supplementing the collection efforts of the local child support agencies. Submissions shall be in the form and manner and at the time prescribed by the department. Collection shall be made by the department in accordance with Section 17450. 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).

(d) 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 submitted to the department no later than 30 days after receipt of the case by the local child support agency.

SEC. 5. Section 17502 of the Family Code is amended to read:

17502. A local child support agency that is collecting child support payments on behalf of a child and who is unable to deliver the payments to the obligee because the local child support agency is unable to locate the obligee shall make all reasonable efforts to locate the obligee for a period of six months. If the local child support agency is unable to locate the obligee within the six-month period, it shall return the undeliverable payments to the obligor, with written notice advising the obligor that (a) the return of the funds does not relieve the obligor of the support order, and (b) the obligor should consider placing the funds aside for purposes of child support in case the obligee appears and seeks collection of the undistributed amounts. No interest shall accrue on any past-due child support amount for which the obligor made payment to the local child

support agency for six consecutive months, or on any amounts due thereafter until the obligee is located, provided that the local child support agency returned the funds to the obligor because the local child support agency was unable to locate the obligee and, when the obligee was located, the obligor made full payment for all past-due child support amounts.

SEC. 6. Article 1.5 (commencing with Section 17450) is added to Chapter 2 of Division 17 of the Family Code, to read:

Article 1.5. Delinquent Child Support Obligations and Financial Institution Data Match

17450. (a) For purposes of this article:

(1) ''Child support delinquency'' means a delinquency defined in subdivision (c) of Section 17500.

(2) ''Earnings'' shall include the items described in Section 5206.

(b) (1) When a delinquency is submitted to the department pursuant to subdivision (c) of Section 17500, the amount of the child support delinquency shall be collected by the department in any manner authorized under state or federal law.

(2) Any compensation, fee, commission, expense, or any other fee for service incurred by the department in the collection of a child support delinquency authorized under this article shall not be an obligation of, or collected from, the obligated parent.

(c) (1) The department may return or allow a local child support agency to retain a child support delinquency for a specified purpose for collection where the department determines that the return or retention of the delinquency for the purpose so specified will enhance the collectibility of the delinquency. The department shall establish a process whereby a local child support agency may request and shall be allowed to withdraw, rescind, or otherwise recall the submittal of an account that has been submitted.

(2) If an obligor is disabled, meets the federal Supplemental Security Income resource test, and is receiving Supplemental Security Income/State Supplementary Payments (SSI/SSP), or, but for excess income as described in Section 416.1100 and following of Part 416 of Title 20 of the Code of Federal Regulations, would be eligible to receive as SSI/SSP, pursuant to Section 12200 of the Welfare and Institutions Code, and the obligor has supplied the local child support agency with proof of his or her eligibility for, and, if applicable, receipt of, SSI/SSP or Social Security Disability Insurance benefits, then the child support delinquency shall not be referred to the department for collection, and, if referred, shall be withdrawn, rescinded, or otherwise recalled from the department by the local child support agency. The department shall not

take any collection action, or if the local child support agency has already taken collection action, shall cease collection actions in the case of a disabled obligor when the delinquency is withdrawn, rescinded, or otherwise recalled by the local child support agency in accordance with the process established as described in paragraph (1).

(d) It is the intent of the Legislature that when the California Child Support Automation System (CCSAS) is fully operational, any statutes that should be modified based upon the status of the system shall be revised. During the development and implementation of CCSAS, the department, as the Title IV-D agency, may, through appropriate interagency agreement, delegate any and all of the functions or procedures specified in this article to the Franchise Tax Board. The Franchise Tax Board shall perform those functions or procedures as specified in Sections 19271 to 19275, inclusive, of the Revenue and Taxation Code until such time as the director, by letter to the executive officer of the Franchise Tax Board, revokes such delegation of Title IV-D functions. Sections 19271 to 19275, inclusive, of the Revenue and Taxation Code shall be effective for these purposes until the revocation of delegation to the Franchise Tax Board.

(e) Consistent with the development and implementation of the California Child Support Automation System (CCSAS), the Franchise Tax Board and the department shall enter into a letter of agreement and an interagency agreement whereby the department shall assume responsibility for collection of child support delinquencies and the Financial Institution Data Match System as set forth in this article. The letter of agreement and interagency agreement shall, at a minimum, set forth all of the following:

(1) Contingent upon the enactment of the Budget Act, and staffing authorization from the Department of Finance and the Department of Personnel Administration, the department shall assume responsibility for leadership and staffing of the collection of child support delinquencies and the Financial Institution Data Match System.

(2) All employees and other personnel who staff or provide support for the collection of child support delinquencies and the Financial Institution Data Match System at the Franchise Tax Board shall become the employees of the department at their existing or equivalent classification, salaries, and benefits.

(3) Any other provisions necessary to ensure continuity of function and meet or exceed existing levels of service, including, but not limited to, agreements for continued use of automated systems used by the Franchise Tax Board to locate child support obligors and their assets.

17452. (a) Subject to state and federal privacy and information security laws, the Franchise Tax Board shall make tax return information

available to the department, upon request, for the purpose of collecting child support delinquencies referred to the department.

(b) For purposes of this article, the Franchise Tax Board shall incur no obligation or liability to any person arising from any of the following:

(1) Furnishing information to the department as required by this section.

(2) Failing to disclose to a taxpayer 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 department required by this section.

(3) Any other action taken in good faith to comply with the requirements of this section.

(c) It is the intent of the Legislature that any provision of income tax return information by the Franchise Tax Board to the department pursuant to this article shall be done in accordance with the privacy and confidential information laws of this state and of the United States, and to the satisfaction of the Franchise Tax Board.

17453. (a) The department, in coordination with financial institutions doing business in this state, shall operate a Financial Institution Data Match System utilizing automated data exchanges to the maximum extent feasible. The Financial Institution Data Match System shall be implemented and maintained pursuant to guidelines prescribed by the department. These guidelines shall include a structure by which financial institutions, or their designated data-processing agents, shall receive from the department the file or files of past-due support obligors compiled in accordance with subdivision (c), so 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 (P.L. 104-193), 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 department a list of all accountholders and their social security numbers, so that the department shall match that list with the file or files of past-due support obligors compiled in accordance with subdivision (c).

(b) The Financial Institution Data 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 17450, shall be a violation of Section 17212.

(c) (1) Until implementation of the California Child Support Automation System, 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, and who are past due in the payment of their support obligations. The file shall be compiled, updated, and forwarded to the department, in accordance with the guidelines prescribed by the department.

(2) The department 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 pursuant to paragraph 14 of subsection (a) of Section 666 of Title 42 of the United States Code. The file shall include, to the extent possible, the obligor's address.

(d) To effectuate the Financial Institution Data Match System, financial institutions subject to this section shall do all of the following:

(1) Provide to the department 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 department 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 department, 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 department in accordance with Section 17454.

(e) Unless otherwise required by applicable law, a financial institution furnishing a report or providing information to the department pursuant to this section shall not disclose to a depositor, accountholder, 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 department.

(f) A financial institution shall incur no obligation or liability to any person arising from any of the following:

(1) Furnishing information to the department as required by this section.

(2) Failing to disclose to a depositor, accountholder, codepositor, or coaccountholder, 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 department required by this section.

(3) Withholding or transmitting any assets in response to a notice or order to withhold issued by the department 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 17456.

(4) Any other action taken in good faith to comply with the requirements of this section.

(g) (1) With respect to files compiled under paragraph (1) of subdivision (c), the department shall forward to the counties, in accordance with guidelines prescribed by the department, 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.

(2) With respect to files compiled under paragraph (2) of subdivision (c), the amount collected by the department shall be deposited and distributed to the referring state in accordance with Section 17458.

(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 department taking any collection action pursuant to Section 17454.

(i) A child support delinquency need not be referred to the department for collection if a jurisdiction outside this state is enforcing the support order.

(j) (1) Each county shall notify the department 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 department within two business days of the receipt of a claim of exemption from an obligor. The department shall direct the financial institution subject to the order to withhold to hold any funds subject to the order pending notification by the department 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 department with a copy of the order. The department shall instruct the financial institution to remit or release the obligor's funds in accordance with the court's order.

(k) 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.

(*l*) 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 paragraph (1) of subsection (d) of Section 669A of Title 42 of the United States Code.

17454. (a) At least 45 days before sending a notice to withhold, the department shall request that a depository institution provide the department with a designated address for receiving notices to withhold.

(b) Once the depository institution has specified a designated address pursuant to subdivision (a), the department shall send all notices to that address unless the depository institution provides notification of another address. The department shall send all notices to withhold to a new designated address 30 days after notification.

(c) If a notice to withhold is mailed to the branch where the account is located or principal banking office, the depository institution shall be liable for a failure to withhold only to the extent that the accounts can be identified in information normally maintained at that location in the ordinary course of business.

(d) The department may by notice, served by magnetic media, electronic transmission, or other electronic technology, require any depository institution, as defined in the Federal Reserve Act (12 U.S.C.A. Sec. 461 (b)(1)(A)), that the department, in its sole discretion, has reason to believe may have in its possession, or under its control, any credits or other personal property or other things of value, belonging to a child support obligor, to withhold, from the credits or other personal property or other things of value, the amount of any child support delinquency, and interest, due from an obligor and transmit that amount withheld to the department at the times that it may designate, but not less than 10 business days from receipt of the notice. The notice shall state the amount due from the obligor and shall be delivered or transmitted to the branch or office reported pursuant to subdivision (a), or other address designated by that depository institution for purposes of the department serving notice by magnetic media, electronic transmission, or other electronic technology.

(e) For purposes of this section, the term ''address'' shall include telephone or modem number, facsimile number, or any other number designated by the depository institution to receive data by electronic means.

17456. (a) Any person required to withhold and transmit any amount pursuant to this article shall comply with the requirement without resort to any legal or equitable action in a court of law or equity. Any person paying to the department any amount required by it to be

withheld is not liable therefore to the person from whom withheld unless the amount withheld is refunded to the withholding agent. However, if a depository institution, as defined in the Federal Reserve Act (12 U.S.C.A. Sec. 461(b)(1)(A)) withholds and pays to the department pursuant to this article any moneys held in a deposit account in which the delinquent obligor and another person or persons have an interest, or in an account held in the name of a third party or parties in which the delinquent obligor is ultimately determined to have no interest, the depository institution paying those moneys to the department is not liable therefore to any of the persons who have an interest in the account, unless the amount withheld is refunded to the withholding agent.

(b) In the case of a deposit account or accounts for which this notice to withhold applies, the depository institution shall send a notice by first-class mail to each person named on the account or accounts included in the notice from the department, provided that a current address for each person is available to the institution. This notice shall inform each person as to the reason for the hold placed on the account or accounts, the amount subject to being withheld, and the date by which this amount is to be remitted to the department. An institution may assess the account or accounts of each person receiving this notice a reasonable service charge not to exceed three dollars ($3).

17458. Any child support delinquency collected by the department, including those amounts that result in overpayment of a child support delinquency, shall be deposited in the State Treasury, after clearance of the remittance, to the credit of the Special Deposit Fund and distributed as specified by interagency agreement executed by the Franchise Tax Board and the department, with the concurrence of the Controller. Notwithstanding Section 13340 of the Government Code, all moneys deposited in the Special Deposit Fund pursuant to this article are hereby continuously appropriated, without regard to fiscal years, for purposes of making distributions. Upon availability of the State Disbursement Unit, any child support delinquency collected shall be deposited in a manner such that the deposit and subsequent disbursement is consistent with federal law.

17460. (a) As necessary, the department shall seek reciprocal agreements with other states to improve its ability to collect child support payments from out-of-state obligated parents on behalf of custodial parents residing in California. The department may pursue agreements with the Internal Revenue Service, as permitted by federal law, to improve collections of child support delinquencies from out-of-state obligated parents through cooperative agreements with the service.

(b) The California Child Support Automation System, established pursuant to Chapter 4 (commencing with Section 10080) of Part 1 of

Division 9 of the Welfare and Institutions Code, shall, for purposes of this article, include the capacity to interface and exchange information, if feasible, with the Internal Revenue Service, to enable the immediate reporting and tracking of obligated parent information.

(c) The department shall enter into any interagency agreements that are necessary for the implementation of this article. State departments and boards shall cooperate with the department to the extent necessary for the implementation of this article. Out of any money received from the federal government for the purpose of reimbursing state departments and boards for their actual and reasonable costs incurred in complying with this section, the department shall reimburse those departments and boards. To the extent that money is not provided by the federal government for that purpose, and subject to the annual Budget Act, the state shall fund departments and boards for their costs in complying with this section.

SEC. 7. Section 17506 of the Family Code is amended to read:

17506. (a) There is in the department a California Parent Locator Service and Central Registry that shall collect and disseminate all of the following, with respect to any parent, putative parent, spouse, or former spouse:

(1) The full and true name of the parent together with any known aliases.

(2) Date and place of birth.

(3) Physical description.

(4) Social security number.

(5) Employment history and earnings.

(6) Military status and Veterans Administration or military service serial number.

(7) Last known address, telephone number, and date thereof.

(8) Driver's license number, driving record, and vehicle registration information.

(9) Criminal, licensing, and applicant records and information.

(10) (A) Any additional location, asset, and income information, including income tax return information obtained pursuant to Section 19285.1 of the Revenue and Taxation Code, and to the extent permitted by federal law, the address, telephone number, and social security number obtained from a public utility, cable television corporation, a provider of electronic digital pager communication, or a provider of cellular telephone services that may be of assistance in locating the parent, putative parent, abducting, concealing, or detaining parent, spouse, or former spouse, in establishing a parent and child relationship, in enforcing the child support liability of the absent parent, or enforcing the spousal support liability of the spouse or former spouse to the extent required by the state plan pursuant to Section 17604.

(B) For purposes of this subdivision, ''income tax return information'' means all of the following regarding the taxpayer:

(i) Assets.

(ii) Credits.

(iii) Deductions.

(iv) Exemptions.

(v) Identity.

(vi) Liabilities.

(vii) Nature, source, and amount of income.

(viii) Net worth.

(ix) Payments.

(x) Receipts.

(xi) Address.

(xii) Social security number.

(b) Pursuant to a letter of agreement entered into between the Department of Child Support Services and the Department of Justice, the Department of Child Support Services shall assume responsibility for the California Parent Locator Service and Central Registry. The letter of agreement shall, at a minimum, set forth all of the following:

(1) Contingent upon funding in the Budget Act, the Department of Child Support Services shall assume responsibility for leadership and staff of the California Parent Locator Service and Central Registry commencing July 1, 2003.

(2) All employees and other personnel who staff or provide support for the California Parent Locator Service and Central Registry shall, at the time of the transition, at their option, become the employees of the Department of Child Support Services at their existing or equivalent classification, salaries, and benefits.

(3) Until the department's automation system for the California Parent Locator Service and Central Registry functions is fully operational, the department shall use the automation system operated by the Department of Justice.

(4) Any other provisions necessary to ensure continuity of function and meet or exceed existing levels of service.

(c) To effectuate the purposes of this section, the California Child Support Automation System, the California Parent Locator Service and Central Registry, and the Franchise Tax Board shall utilize the federal Parent Locator Service to the extent necessary, and may request and shall receive from all departments, boards, bureaus, or other agencies of the state, or any of its political subdivisions, and those entities shall provide, that assistance and data that will enable the Department of Child Support Services and other public agencies to carry out their powers and duties to locate parents, spouses, and former spouses, and to identify their assets, to establish parent-child relationships, and to enforce liability for

child or spousal support, and for any other obligations incurred on behalf of children, and shall also provide that information to any local child support agency in fulfilling the duties prescribed in Section 270 of the Penal Code, and in Chapter 8 (commencing with Section 3130) of Part 2 of Division 8 of this code, relating to abducted, concealed, or detained children. The California Child Support Automation System shall be entitled to the same cooperation and information as the California Parent Locator Service and Central Registry to the extent allowed by law. The California Child Support Automation System shall be allowed access to criminal record information only to the extent that access is allowed by state and federal law.

(d) (1) To effectuate the purposes of this section, and notwithstanding any other provision of California law, regulation, or tariff, and to the extent permitted by federal law, the California Parent Locator Service and Central Registry and the California Child Support Automation System may request and shall receive from public utilities, as defined in Section 216 of the Public Utilities Code, customer service information, including the full name, address, telephone number, date of birth, employer name and address, and social security number of customers of the public utility, to the extent that this information is stored within the computer database of the public utility.

(2) To effectuate the purposes of this section, and notwithstanding any other provision of California law, regulation, or tariff, and to the extent permitted by federal law, the California Parent Locator Service and Central Registry and the California Child Support Automation System may request and shall receive from cable television corporations, as defined in Section 215.5 of the Public Utilities Code, the providers of electronic digital pager communication, as defined in Section 629.51 of the Penal Code, and the providers of cellular telephone services, as defined in Section 17538.9 of the Business and Professions Code, customer service information, including the full name, address, telephone number, date of birth, employer name and address, and social security number of customers of the cable television corporation, customers of the providers of electronic digital pager communication, and customers of the providers of cellular telephone services.

(3) In order to protect the privacy of utility, cable television, electronic digital pager communication, and cellular telephone customers, a request to a public utility, cable television corporation, provider of electronic digital pager communication, or provider of cellular telephone services for customer service information pursuant to this section shall meet the following requirements:

(A) Be submitted to the public utility, cable television corporation, provider of electronic digital pager communication, or provider of cellular telephone services in writing, on a transmittal document

prepared by the California Parent Locator Service and Central Registry or the California Child Support Automation System and approved by all of the public utilities, cable television corporations, providers of electronic digital pager communication, and providers of cellular telephone services. The transmittal shall be deemed to be an administrative subpoena for customer service information.

(B) Have the signature of a representative authorized by the California Parent Locator Service and Central Registry or the California Child Support Automation System.

(C) Contain at least three of the following data elements regarding the person sought:

(i) First and last name, and middle initial, if known.

(ii) Social security number.

(iii) Driver's license number.

(iv) Birth date.

(v) Last known address.

(vi) Spouse's name.

(D) The California Parent Locator Service and Central Registry and the California Child Support Automation System shall ensure that each public utility, cable television corporation, provider of electronic digital pager communication services, and provider of cellular telephone services has at all times a current list of the names of persons authorized to request customer service information.

(E) The California Child Support Automation System and the California Parent Locator Service and Central Registry shall ensure that customer service information supplied by a public utility, cable television corporation, providers of electronic digital pager communication, or provider of cellular telephone services is applicable to the person who is being sought before releasing the information pursuant to subdivision (d).

(4) During the development of the California Child Support Automation System, the department shall determine the necessity of additional locate sources, including those specified in this section, based upon the cost-effectiveness of those sources.

(5) The public utility, cable television corporation, electronic digital pager communication provider, or cellular telephone service provider may charge a fee to the California Parent Locator Service and Central Registry or the California Child Support Automation System for each search performed pursuant to this subdivision to cover the actual costs to the public utility, cable television corporation, electronic digital pager communication provider, or cellular telephone service provider for providing this information.

(6) No public utility, cable television corporation, electronic digital pager communication provider, or cellular telephone service provider or

official or employee thereof, shall be subject to criminal or civil liability for the release of customer service information as authorized by this subdivision.

(e) Notwithstanding Section 14202 of the Penal Code, any records established pursuant to this section shall be disseminated only to the Department of Child Support Services, the California Child Support Automation System, the California Parent Locator Service and Central Registry, the parent locator services and central registries of other states as defined by federal statutes and regulations, a local child support agency of any county in this state, and the federal Parent Locator Service. The California Child Support Automation System shall be allowed access to criminal offender record information only to the extent that access is allowed by law.

(f) (1) At no time shall any information received by the California Parent Locator Service and Central Registry or by the California Child Support Automation System be disclosed to any person, agency, or other entity, other than those persons, agencies, and entities specified pursuant to Section 17505, this section, or any other provision of law.

(2) This subdivision shall not otherwise affect discovery between parties in any action to establish, modify, or enforce child, family, or spousal support, that relates to custody or visitation.

(g) (1) The Department of Justice, in consultation with the Department of Child Support Services, shall promulgate rules and regulations to facilitate maximum and efficient use of the California Parent Locator Service and Central Registry. Upon implementation of the California Child Support Automation System, the Department of Child Support Services shall assume all responsibility for promulgating rules and regulations for use of the California Parent Locator Service and Central Registry.

(2) The Department of Child Support Services, the Public Utilities Commission, the cable television corporations, providers of electronic digital pager communication, and the providers of cellular telephone services shall develop procedures for obtaining the information described in subdivision (c) from public utilities, cable television corporations, providers of electronic digital pager communication, and providers of cellular telephone services and for compensating the public utilities, cable television corporations, providers of electronic digital pager communication, and providers of cellular telephone services for providing that information.

(h) The California Parent Locator Service and Central Registry may charge a fee not to exceed eighteen dollars ($18) for any service it provides pursuant to this section that is not performed or funded pursuant to Section 651 and following of Title 42 of the United States Code.

(i) This section shall be construed in a manner consistent with the other provisions of this article.

SEC. 8. Section 17522.5 of the Family Code is amended to read:

17522.5. (a) Notwithstanding Section 8112 of the Commercial Code and Section 700.130 of the Code of Civil Procedure, when a local child support agency pursuant to Section 17522, or the Franchise Tax Board pursuant to Section 18670 or 18670.5 of the Revenue and Taxation Code, or the department pursuant to Section 17454 or 17500, issues a levy upon, or requires by notice any employer, person, political officer or entity, or depository institution to withhold the amount of, as applicable, a financial asset for the purpose of collecting a delinquent child support obligation, the person, financial institution, or securities intermediary (as defined in Section 8102 of the Commercial Code) in possession or control of the financial asset shall liquidate the financial asset in a commercially reasonable manner within 20 days of the issuance of the levy or the notice to withhold. Within five days of liquidation, the person, financial institution, or securities intermediary shall transfer to the local child support agency, the Franchise Tax Board, or the department, as applicable, the proceeds of the liquidation, less any reasonable commissions or fees, or both, which are charged in the normal course of business.

(b) If the value of the financial assets exceed the total amount of support due, the obligor may, within 10 days after the service of the levy or notice to withhold upon the person, financial institution, or securities intermediary, instruct the person, financial institution, or securities intermediary who possesses or controls the financial assets as to which financial assets are to be sold to satisfy the obligation for delinquent support. If the obligor does not provide instructions for liquidation, the person, financial institution, or securities intermediary who possesses or controls the financial assets shall liquidate the financial assets in a commercially reasonable manner and in an amount sufficient to cover the obligation for delinquent child support, and any reasonable commissions or fees, or both, which are charged in the normal course of business, beginning with the financial assets purchased most recently.

(c) For the purposes of this section, a financial asset shall include, but not be limited to, an uncertificated security, certificated security, or security entitlement (as defined in Section 8102 of the Commercial Code), security (as defined in Section 8103 of the Commercial Code), or a securities account (as defined in Section 8501 of the Commercial Code).

SEC. 9. Section 24351.5 is added to the Government Code, to read:

24351.5. Upon implementation of the State Disbursement Unit pursuant to Section 17309 of the Family Code, and notwithstanding Section 24351, the local child support agency shall deposit support

payments paid to that office to an account in a manner as specified by the Department of Child Support Services to permit the processing of child support payments within the timeframes set forth in federal law.

SEC. 10. Section 19270 is added to the Revenue and Taxation Code, to read:

19270. (a) Consistent with the development and implementation of the California Child Support Automation System (CCSAS), the Franchise Tax Board and the Department of Child Support Services shall enter into a letter of agreement and an interagency agreement whereby the Department of Child Support Services shall assume responsibility for collection of child support delinquencies and the Financial Institution Data Match System as set forth in this article. The letter of agreement and the interagency agreement shall, at a minimum, set forth all of the following:

(1) Contingent upon the enactment of the Budget Act, and staffing authorization from the Department of Finance and the Department of Personnel Administration, the Department of Child Support Services shall assume responsibility for leadership and staff of collection of child support delinquencies and the Financial Institution Data Match System.

(2) All employees and other personnel who staff or provide support for the collection of child support delinquencies and the Financial Institution Data Match System at the Franchise Tax Board shall become the employees of the Department of Child Support Services at their existing or equivalent classification, salaries, and benefits.

(3) Any other provisions necessary to ensure continuity of function and meet or exceed existing levels of service, including, but not limited to, agreements for continued use of automated systems used by the Franchise Tax Board to locate child support obligors and their assets.

(b) It is the intent of the Legislature that any provision of income tax return information by the Franchise Tax Board to the Department of Child Support Services pursuant to this article shall be done in accordance with the privacy and confidential information laws of this state and the United States, and to the satisfaction of the Franchise Tax Board.

SEC. 11. Section 19276 is added to the Revenue and Taxation Code, to read:

19276. This article shall remain in effect only until the California Child Support Automated System becomes fully operational and the Director of the Department of Child Support Services revokes delegation of his or her authority to the executive officer of the Franchise Tax Board to collect child support delinquencies, pursuant to Article 1.5 (commencing with Section 17450) of Chapter 2 of Division 17 of the

Family Code, and as of January 1 of the year following that date is repealed.

CHAPTER 807

An act to add Section 1261.6 to the Business and Professions Code, relating to clinical laboratory scientists.

[Approved by Governor September 27, 2004. Filed with Secretary of State September 27, 2004.]

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

SECTION 1. Section 1261.6 is added to the Business and Professions Code, to read:

1261.6. The department may issue a limited clinical laboratory scientist's license in cytogenetics to any person with a minimum of seven years of work experience in this state as a cytogenetic technologist who provides evidence of satisfactory performance on a written examination administered by the National Credentialing Agency for Laboratory Personnel on or before December 31, 1991, in the specialty of cytogenetics, and who meets the federal regulatory requirements for personnel performing high-complexity testing.

CHAPTER 808

An act to amend Section 1142 of the Unemployment Insurance Code, relating to unemployment insurance.

[Approved by Governor September 27, 2004. Filed with Secretary of State September 27, 2004.]

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

SECTION 1. Section 1142 of the Unemployment Insurance Code is amended to read:

1142. (a) If the director finds that any employer or any employee, officer, or agent of any employer, in submitting facts concerning the termination of a claimant's employment pursuant to Section 1030, 1327, 3654, 3701, 4654, or 4701, willfully makes a false statement or representation or willfully fails to report a material fact concerning that termination, the director shall assess a penalty against the employer in

an amount not less than 2 nor more than 10 times the weekly benefit amount of that claimant.

(b) If the director finds that any employer or any employee, officer, or agent of any employer, in submitting a written statement concerning the reasonable assurance, as defined in subdivision (g) of Section 1253.3, of a claimant's reemployment, as required by subdivisions (b), (c), and (i) of Section 1253.3, willfully makes a false statement or representation or willfully fails to report a material fact concerning the reasonable assurance of that reemployment, the director shall assess a penalty against the employer in an amount not less than two nor more than 10 times the weekly benefit amount of that claimant.

(c) This article, Article 9 (commencing with Section 1176) of this chapter with respect to refunds, and Chapter 7 (commencing with Section 1701) of this part with respect to collections shall apply to the assessments provided by this section. Penalties collected under this section shall be deposited in the contingent fund.

CHAPTER 809

An act to amend and renumber Section 422.95 of, and to add Sections 422.865, 422.96, and 3053.4 to, the Penal Code, relating to hate crimes.

[Approved by Governor September 27, 2004. Filed with Secretary of State September 27, 2004.]

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

SECTION 1. Section 422.865 is added to the Penal Code, to read:

422.865. (a) In the case of any person who is committed to a state hospital or other treatment facility under the provisions of Section 1026 for any offense against the person or property of another individual, private institution, or public agency because of the victim's actual or perceived race, color, ethnicity, religion, nationality, country of origin, ancestry, disability, gender, or sexual orientation, including, but not limited to, offenses defined in Section 302, 423.2, 594.3, 11411, 11412, or 11413, or for any hate crime, and then is either placed on outpatient status or conditional release from the state hospital or other treatment facility, the court or community program director may order that the defendant be required as a condition of outpatient status or conditional release to complete a class or program on racial or ethnic sensitivity, or other similar training in the area of civil rights, or a one-year counseling program intended to reduce the tendency toward violent and antisocial behavior if that class, program, or training is available and was

developed or authorized by the court or local agencies in cooperation with organizations serving the affected community.

(b) In the case of any person who is committed to a state hospital or other treatment facility under the provisions of Section 1026 for any offense against the person or property of another individual, private institution, or public agency committed because of the victim's actual or perceived race, color, ethnicity, religion, nationality, country of origin, ancestry, disability, gender, or sexual orientation, including, but not limited to, offenses defined in Section 302, 423.2, 594.3, 11411, 11412, or 11413, or for any hate crime, and then is either placed on outpatient status or conditional release from the state hospital or other treatment facility, the court, absent compelling circumstances stated on the record, shall make an order protecting the victim, or known immediate family or domestic partner of the victim, from further acts of violence, threats, stalking, or harassment by the defendant, including any stay-away conditions as the court deems appropriate, and shall make obedience of that order a condition of the defendant's outpatient status or conditional release.

(c) It is the intent of the Legislature to encourage state agencies and treatment facilities to establish education and training programs to prevent violations of civil rights and hate crimes.

SEC. 2. Section 422.95 of the Penal Code is amended to read:

422.95. (a) In the case of any person who is granted probation for any offense against the person or property of another individual, private institution, or public agency, committed because of the victim's actual or perceived race, color, ethnicity, religion, nationality, country of origin, ancestry, disability, gender, or sexual orientation, including, but not limited to, offenses defined in Section 422.6, 422.7, 422.75, 594.3, or 11411, the court, absent compelling circumstances stated on the record, shall make an order protecting the victim, or known immediate family or domestic partner of the victim, from further acts of violence, threats, stalking, or harassment by the defendant, including any stay-away conditions the court deems appropriate, and shall make obedience of that order a condition of the defendant's probation. In these cases, the court may also order that the defendant be required to do one or more of the following as a condition of probation:

(1) Complete a class or program on racial or ethnic sensitivity, or other similar training in the area of civil rights, or a one-year counseling program intended to reduce the tendency toward violent and antisocial behavior if that class, program, or training is available and was developed or authorized by the court or local agencies in cooperation with organizations serving the affected community.

(2) Make payments or other compensation to a community-based program or local agency that provides services to victims of hate violence.

(3) Reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's acts.

(b) Any payments or other compensation ordered under this section shall be in addition to restitution payments required under Section 1203.04, and shall be made only after that restitution is paid in full.

(c) It is the intent of the Legislature to encourage counties, cities, and school districts to establish education and training programs to prevent violations of civil rights and hate crimes.

SEC. 2.1. Section 422.95 of the Penal Code is amended and renumbered to read:

422.85. (a) In the case of any person who is convicted of any offense against the person or property of another individual, private institution, or public agency, committed because of the victim's actual or perceived race, color, ethnicity, religion, nationality, country of origin, ancestry, disability, gender, or sexual orientation, including, but not limited to offenses defined in Section 302, 423.2, 594.3, 11411, 11412, or 11413, or for any hate crime, the court, absent compelling circumstances stated on the record, shall make an order protecting the victim, or known immediate family or domestic partner of the victim, from further acts of violence, threats, stalking, or harassment by the defendant, including any stay-away conditions the court deems appropriate, and shall make obedience of that order a condition of the defendant's probation. In these cases the court may also order that the defendant be required to do one or more of the following as a condition of probation:

(1) Complete a class or program on racial or ethnic sensitivity, or other similar training in the area of civil rights, or a one-year counseling program intended to reduce the tendency toward violent and antisocial behavior if that class, program, or training is available and was developed or authorized by the court or local agencies in cooperation with organizations serving the affected community.

(2) Make payments or other compensation to a community-based program or local agency that provides services to victims of hate violence.

(3) Reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's acts.

(b) Any payments or other compensation ordered under this section shall be in addition to restitution payments required under Section 1203.04, and shall be made only after that restitution is paid in full.

SEC. 3. Section 422.96 is added to the Penal Code, to read:

422.96. (a) In the case of any person who is committed to a state hospital or other treatment facility under the provisions of Section 1026 for any offense against the person or property of another individual, private institution, or public agency because of the victim's actual or perceived race, color, ethnicity, religion, nationality, country of origin, ancestry, disability, gender, or sexual orientation, including, but not limited to, offenses defined in Section 422.6, 422.7, 422.75, 594.3, or 11411, and then is either placed on outpatient status or conditional release from the state hospital or other treatment facility, the court or community program director may order that the defendant be required as a condition of outpatient status or conditional release to complete a class or program on racial or ethnic sensitivity, or other similar training in the area of civil rights, or a one-year counseling program intended to reduce the tendency toward violent and antisocial behavior if that class, program, or training is available and was developed or authorized by the court or local agencies in cooperation with organizations serving the affected community.

(b) In the case of any person who is committed to a state hospital or other treatment facility under the provisions of Section 1026 for any offense against the person or property of another individual, private institution, or public agency committed because of the victim's actual or perceived race, color, ethnicity, religion, nationality, country of origin, ancestry, disability, gender, or sexual orientation, including, but not limited to, offenses defined in Section 422.6, 422.7, 422.75, 594.3, or 11411, and then is either placed on outpatient status or conditional release from the state hospital or other treatment facility, the court, absent compelling circumstances stated on the record, shall make an order protecting the victim, or known immediate family or domestic partner of the victim, from further acts of violence, threats, stalking, or harassment by the defendant, including any stay-away conditions as the court deems appropriate, and shall make obedience of that order a condition of the defendant's outpatient status or conditional release.

(c) It is the intent of the Legislature to encourage state agencies and treatment facilities to establish education and training programs to prevent violations of civil rights and hate crimes.

SEC. 4. Section 3053.4 is added to the Penal Code, to read:

3053.4. In the case of any person who is released from prison on parole or after serving a term of imprisonment for any felony offense committed against the person or property of another individual, private institution, or public agency because of the victim's actual or perceived race, color, ethnicity, religion, nationality, country of origin, ancestry, disability, gender, or sexual orientation, including, but not limited to, offenses defined in Section 422.6, 422.7, 422.75, 594.3, or 11411, the

parole authority, absent compelling circumstances, shall order the defendant as a condition of parole to refrain from further acts of violence, threats, stalking, or harassment of the victim, or known immediate family or domestic partner of the victim, including stay-away conditions when appropriate. In these cases, the parole authority may also order that the defendant be required as a condition of parole to complete a class or program on racial or ethnic sensitivity, or other similar training in the area of civil rights, or a one-year counseling program intended to reduce the tendency toward violent and antisocial behavior if that class, program, or training is available and was developed or authorized by the court or local agencies in cooperation with organizations serving the affected community.

SEC. 5. (a) Section 1 of this bill shall only become operative if (1) both this bill and SB 1234 are enacted and become effective on or before January 1, 2005, (2) this bill adds Section 422.96 to, and SB 1234 amends and renumbers Section 422.95 of the Penal Code, and (3) this bill is enacted after SB 1234, in which case Section 3 of this bill shall not become operative.

(b) Section 2.1 of this bill incorporates amendments to Section 422.95 of the Penal Code proposed by both this bill and SB 1234. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2005, (2) this bill amends, and SB 1234 amends and renumbers Section 422.95 of the Penal Code, and (3) this bill is enacted after SB 1234, in which case Section 2 of this bill shall not become operative.

CHAPTER 810

An act to amend Sections 366, 366.1, 366.21, 366.22, 366.26, 366.3, 391, 10609.4, and 16501.1 of, and to add Section 16131.5 to, the Welfare and Institutions Code, relating to children.

[Approved by Governor September 27, 2004. Filed with Secretary of State September 27, 2004.]

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

SECTION 1. Section 366 of the Welfare and Institutions Code is amended to read:

366. (a) (1) The status of every dependent child in foster care shall be reviewed periodically as determined by the court but no less frequently than once every six months, as calculated from the date of the original dispositional hearing, until the hearing described in Section

366.26 is completed. The court shall consider the safety of the child and shall determine all of the following:

(A) The continuing necessity for and appropriateness of the placement.

(B) The extent of the agency's compliance with the case plan in making reasonable efforts to return the child to a safe home and to complete any steps necessary to finalize the permanent placement of the child, including efforts to maintain relationships between a child who is 10 years of age or older who is placed in a group home for six months or longer from the date the child entered foster care, and individuals other than the child's siblings who are important to the child, consistent with the child's best interests.

(C) Whether there should be any limitation on the right of the parent or guardian to make educational decisions for the child. That limitation shall be specifically addressed in the court order and may not exceed those necessary to protect the child. Whenever the court specifically limits the right of the parent or guardian to make educational decisions for the child, the court shall at the same time appoint a responsible adult to make educational decisions for the child pursuant to Section 361.

(D) (i) Whether the child has other siblings under the court's jurisdiction, and, if any siblings exist, all of the following:

(I) The nature of the relationship between the child and his or her siblings.

(II) The appropriateness of developing or maintaining the sibling relationships pursuant to Section 16002.

(III) If the siblings are not placed together in the same home, why the siblings are not placed together and what efforts are being made to place the siblings together, or why those efforts are not appropriate.

(IV) If the siblings are not placed together, the frequency and nature of the visits between siblings.

(V) The impact of the sibling relationships on the child's placement and planning for legal permanence.

(VI) The continuing need to suspend sibling interaction, if applicable, pursuant to subdivision (c) of Section 16002.

(ii) The factors the court may consider in making a determination regarding the nature of the child's sibling relationships may include, but are not limited to, whether the siblings were raised together in the same home, whether the siblings have shared significant common experiences or have existing close and strong bonds, whether either sibling expresses a desire to visit or live with his or her sibling, as applicable, and whether ongoing contact is in the child's best emotional interests.

(E) The extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care.

(2) The court shall project a likely date by which the child may be returned to and safely maintained in the home or placed for adoption, legal guardianship, or in another planned permanent living arrangement.

(b) Subsequent to the hearing, periodic reviews of each child in foster care shall be conducted pursuant to the requirements of Sections 366.3 and 16503.

(c) If the child has been placed out of state, each review described in subdivision (a) and any reviews conducted pursuant to Sections 366.3 and 16503 shall also address whether the out-of-state placement continues to be the most appropriate placement selection and in the best interests of the child.

(d) A child may not be placed in an out-of-state group home, or remain in an out-of-state group home, unless the group home is in compliance with Section 7911.1 of the Family Code.

SEC. 2. Section 366.1 of the Welfare and Institutions Code is amended to read:

366.1. Each supplemental report required to be filed pursuant to Section 366 shall include, but not be limited to, a factual discussion of each of the following subjects:

(a) Whether the county welfare department social worker has considered child protective services, as defined in Chapter 5 (commencing with Section 16500) of Part 4 of Division 9, as a possible solution to the problems at hand, and has offered those services to qualified parents, if appropriate under the circumstances.

(b) What plan, if any, for the return and maintenance of the child in a safe home is recommended to the court by the county welfare department social worker.

(c) Whether the subject child appears to be a person who is eligible to be considered for further court action to free the child from parental custody and control.

(d) What actions, if any, have been taken by the parent to correct the problems that caused the child to be made a dependent child of the court.

(e) If the parent or guardian is unwilling or unable to participate in making an educational decision for his or her child, or if other circumstances exist that compromise the ability of the parent or guardian to make educational decisions for the child, the county welfare department or social worker shall consider whether the right of the parent or guardian to make educational decisions for the child should be limited. If the supplemental report makes that recommendation, the report shall identify whether there is a responsible adult available to make educational decisions for the child pursuant to Section 361.

(f) (1) Whether the child has any siblings under the court's jurisdiction, and, if any siblings exist, all of the following:

(A) The nature of the relationship between the child and his or her siblings.

(B) The appropriateness of developing or maintaining the sibling relationships pursuant to Section 16002.

(C) If the siblings are not placed together in the same home, why the siblings are not placed together and what efforts are being made to place the siblings together, or why those efforts are not appropriate.

(D) If the siblings are not placed together, the frequency and nature of the visits between siblings.

(E) The impact of the sibling relationships on the child's placement and planning for legal permanence.

(2) The factual discussion shall include a discussion of indicators of the nature of the child's sibling relationships, including, but not limited to, whether the siblings were raised together in the same home, whether the siblings have shared significant common experiences or have existing close and strong bonds, whether either sibling expresses a desire to visit or live with his or her sibling, as applicable, and whether ongoing contact is in the child's best emotional interests.

(g) Whether a child who is 10 years of age or older who is placed in a group home for six months or longer from the date the child entered foster care has relationships with individuals other than the child's siblings that are important to the child, consistent with the child's best interests, and actions taken to maintain those relationships. The social worker shall ask every child who is 10 years of age or older who is placed in a group home for six months or longer from the date the child entered foster care to identify any individuals other than the child's siblings who are important to the child, consistent with the child's best interest. The social worker may ask any other child to provide that information, as appropriate.

SEC. 3. Section 366.21 of the Welfare and Institutions Code is amended to read:

366.21. (a) Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the appearance calendar. The court shall advise all persons present at the hearing of the date of the future hearing and of their right to be present and represented by counsel.

(b) Except as provided in Sections 294 and 295, notice of the hearing shall be provided pursuant to Section 293.

(c) At least 10 calendar days prior to the hearing, the social worker shall file a supplemental report with the court regarding the services provided or offered to the parent or legal guardian to enable him or her to assume custody and the efforts made to achieve legal permanence for the child if efforts to reunify fail, including, but not limited to, efforts to maintain relationships between a child who is 10 years of age or older

and has been in out-of-home placement in a group home for six months or longer from the date the child entered foster care and individuals who are important to the child, consistent with the child's best interests; the progress made; and, where relevant, the prognosis for return of the child to the physical custody of his or her parent or legal guardian; and shall make his or her recommendation for disposition. If the child is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5, the report and recommendation may also take into account those factors described in subdivision (e) relating to the child's sibling group. If the recommendation is not to return the child to a parent or legal guardian, the report shall specify why the return of the child would be detrimental to the child. The social worker shall provide the parent or legal guardian and counsel for the child with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing. In the case of a child removed from the physical custody of his or her parent or legal guardian, the social worker shall, at least 10 calendar days prior to the hearing, provide a summary of his or her recommendation for disposition to any court-appointed child advocate, and any foster parents, relative caregivers, certified foster parents who have been approved for adoption by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, community care facility, or foster family agency having the physical custody of the child.

(d) Prior to any hearing involving a child in the physical custody of a community care facility or a foster family agency that may result in the return of the child to the physical custody of his or her parent or legal guardian, or in adoption or the creation of a legal guardianship, the facility or agency shall file with the court a report containing its recommendation for disposition. Prior to the hearing involving a child in the physical custody of a foster parent, a relative caregiver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, the foster parent, relative caregiver, or the certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, may file with the court a report containing his or her recommendation for disposition. The court shall consider the report and recommendation filed pursuant to this subdivision prior to determining any disposition.

(e) At the review hearing held six months after the initial dispositional hearing, the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court

finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; and shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself to services provided.

Whether or not the child is returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental or would not be detrimental. The court also shall make appropriate findings pursuant to subdivision (a) of Section 366; and, where relevant, shall order any additional services reasonably believed to facilitate the return of the child to the custody of his or her parent or legal guardian. The court shall also inform the parent or legal guardian that if the child cannot be returned home by the 12-month permanency hearing, a proceeding pursuant to Section 366.26 may be instituted. This section does not apply in a case where, pursuant to Section 361.5, the court has ordered that reunification services shall not be provided.

If the child was under the age of three years on the date of the initial removal, or is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5, and the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the child, who was under the age of three years on the date of initial removal or is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5, may be returned to his or her parent or legal guardian within six months or that reasonable services have not been provided, the court shall continue the case to the 12-month permanency hearing.

For the purpose of placing and maintaining a sibling group together in a permanent home, the court, in making its determination to schedule a hearing pursuant to Section 366.26 for some or all members of a sibling group, as described in paragraph (3) of subdivision (a) of Section 361.5, shall review and consider the social worker's report and recommendations. Factors the report shall address, and the court shall

consider, may include, but need not be limited to, whether the sibling group was removed from parental care as a group, the closeness and strength of the sibling bond, the ages of the siblings, the appropriateness of maintaining the sibling group together, the detriment to the child if sibling ties are not maintained, the likelihood of finding a permanent home for the sibling group, whether the sibling group is currently placed together in a preadoptive home or has a concurrent plan goal of legal permanency in the same home, the wishes of each child whose age and physical and emotional condition permits a meaningful response, and the best interest of each child in the sibling group. The court shall specify the factual basis for its finding that it is in the best interest of each child to schedule a hearing pursuant to Section 366.26 in 120 days for some or all of the members of the sibling group.

If the child was removed initially under subdivision (g) of Section 300 and the court finds by clear and convincing evidence that the whereabouts of the parent are still unknown, or the parent has failed to contact and visit the child, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If the court finds by clear and convincing evidence that the parent has been convicted of a felony indicating parental unfitness, the court may schedule a hearing pursuant to Section 366.26 within 120 days.

If the child had been placed under court supervision with a previously noncustodial parent pursuant to Section 361.2, the court shall determine whether supervision is still necessary. The court may terminate supervision and transfer permanent custody to that parent, as provided for by paragraph (1) of subdivision (b) of Section 361.2.

In all other cases, the court shall direct that any reunification services previously ordered shall continue to be offered to the parent or legal guardian pursuant to the time periods set forth in subdivision (a) of Section 361.5, provided that the court may modify the terms and conditions of those services.

If the child is not returned to his or her parent or legal guardian, the court shall determine whether reasonable services that were designed to aid the parent or legal guardian in overcoming the problems that led to the initial removal and the continued custody of the child have been provided or offered to the parent or legal guardian. The court shall order that those services be initiated, continued, or terminated.

(f) The permanency hearing shall be held no later than 12 months after the date the child entered foster care, as that date is determined pursuant to subdivision (a) of Section 361.5. At the permanency hearing, the court shall determine the permanent plan for the child, which shall include a determination of whether the child will be returned to the child's home and, if so, when, within the time limits of subdivision (a) of Section 361.5. The court shall order the return of the child to the physical custody

of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The court shall also determine whether reasonable services that were designed to aid the parent or legal guardian to overcome the problems that led to the initial removal and continued custody of the child have been provided or offered to the parent or legal guardian. For each youth 16 years of age and older, the court shall also determine whether services have been made available to assist him or her in making the transition from foster care to independent living. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5, shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided, and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Whether or not the child is returned to his or her parent or legal guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental. The court also shall make a finding pursuant to subdivision (a) of Section 366.

(g) If the time period in which the court-ordered services were provided has met or exceeded the time period set forth in paragraph (1), (2), or (3) of subdivision (a) of Section 361.5, as appropriate, and a child is not returned to the custody of a parent or legal guardian at the permanency hearing held pursuant to subdivision (f), the court shall do one of the following:

(1) Continue the case for up to six months for a permanency review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or legal guardian. The court shall continue the case only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or legal guardian. For the purposes of this section, in order to find a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within

the extended period of time, the court shall be required to find all of the following:

(A) That the parent or legal guardian has consistently and regularly contacted and visited with the child.

(B) That the parent or legal guardian has made significant progress in resolving problems that led to the child's removal from the home.

(C) The parent or legal guardian has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs.

For purposes of this subdivision, the court's decision to continue the case based on a finding or substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interests of the child.

The court shall inform the parent or legal guardian that if the child cannot be returned home by the next permanency review hearing, a proceeding pursuant to Section 366.26 may be instituted. The court shall not order that a hearing pursuant to Section 366.26 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent or legal guardian.

(2) Order that a hearing be held within 120 days, pursuant to Section 366.26, but only if the court does not continue the case to the permanency planning review hearing and there is clear and convincing evidence that reasonable services have been provided or offered to the parents or legal guardians.

(3) Order that the child remain in long-term foster care, but only if the court finds by clear and convincing evidence, based upon the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship. For purposes of this section, a recommendation by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency that adoption is not in the best interest of the child shall constitute a compelling reason for the court's determination. That recommendation shall be based on the present circumstances of the child and shall not preclude a different recommendation at a later date if the child's circumstances change.

If the court orders that a child who is 10 years of age or older remain in long-term foster care at a group home for six months or longer from the date the child entered foster care, the court shall determine whether the agency has made reasonable efforts to maintain the child's relationships with individuals other than the child's siblings who are important to the child, consistent with the child's best interests, and may make any appropriate order to ensure that those relationships are maintained.

(h) In any case in which the court orders that a hearing pursuant to Section 366.26 shall be held, it shall also order the termination of reunification services to the parent or legal guardian. The court shall continue to permit the parent or legal guardian to visit the child pending the hearing unless it finds that visitation would be detrimental to the child. The court shall make any other appropriate orders to enable the child to maintain relationships with individuals, other than the child's siblings, who are important to the child, consistent with the child's best interests.

(i) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that shall include:

(1) Current search efforts for an absent parent or parents or legal guardians.

(2) A review of the amount of and nature of any contact between the child and his or her parents or legal guardians and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, ''extended family'' for the purpose of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3.

(5) The relationship of the child to any identified prospective adoptive parent or legal guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the child concerning placement and the adoption or guardianship, unless the child's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(6) A description of efforts to be made to identify a prospective adoptive parent or legal guardian, including, but not limited to, child specific recruitment and listing on an adoption exchange.

(7) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(j) If, at any hearing held pursuant to Section 366.26, a guardianship is established for the minor with a relative, and juvenile court dependency is subsequently dismissed, the relative shall be eligible for aid under the Kin-GAP program as provided in Article 4.5 (commencing with Section 11360) of Chapter 2 of Part 3 of Division 9.

(k) As used in this section, ''relative'' means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words ''great,'' ''great-great,'' or ''grand,'' or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

(*l*) For purposes of this section, evidence of any of the following circumstances shall not, in and of itself, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to make and finalize a permanent placement for the child if efforts to reunify fail.

(3) Services to make and finalize a permanent placement for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

SEC. 3.5. Section 366.21 of the Welfare and Institutions Code is amended to read:

366.21. (a) Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the appearance calendar. The court shall advise all persons present at the hearing of the date of the future hearing and of their right to be present and represented by counsel.

(b) Except as provided in Sections 294 and 295, notice of the hearing shall be provided pursuant to Section 293.

(c) At least 10 calendar days prior to the hearing, the social worker shall file a supplemental report with the court regarding the services

provided or offered to the parent or legal guardian to enable him or her to assume custody and the efforts made to achieve legal permanence for the child if efforts to reunify fail, including, but not limited to, efforts to maintain relationships between a child who is 10 years of age or older and has been in out-of-home placement in a group home for six months or longer from the date the child entered foster care and individuals who are important to the child, consistent with the child's best interests; the progress made; and, where relevant, the prognosis for return of the child to the physical custody of his or her parent or legal guardian; and shall make his or her recommendation for disposition. If the child is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5, the report and recommendation may also take into account those factors described in subdivision (e) relating to the child's sibling group. If the recommendation is not to return the child to a parent or legal guardian, the report shall specify why the return of the child would be detrimental to the child. The social worker shall provide the parent or legal guardian, counsel for the child, and any court-appointed child advocate with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing. In the case of a child removed from the physical custody of his or her parent or legal guardian, the social worker shall, at least 10 calendar days prior to the hearing, provide a summary of his or her recommendation for disposition to any foster parents, relative caregivers, and certified foster parents who have been approved for adoption by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, community care facility, or foster family agency having the physical custody of the child.

(d) Prior to any hearing involving a child in the physical custody of a community care facility or a foster family agency that may result in the return of the child to the physical custody of his or her parent or legal guardian, or in adoption or the creation of a legal guardianship, the facility or agency shall file with the court a report containing its recommendation for disposition. Prior to the hearing involving a child in the physical custody of a foster parent, a relative caregiver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, the foster parent, relative caregiver, or the certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, may file with the court a report containing his or her recommendation for disposition. The court shall

consider the report and recommendation filed pursuant to this subdivision prior to determining any disposition.

(e) At the review hearing held six months after the initial dispositional hearing, the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; and shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself to services provided.

Whether or not the child is returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental or would not be detrimental. The court also shall make appropriate findings pursuant to subdivision (a) of Section 366; and, where relevant, shall order any additional services reasonably believed to facilitate the return of the child to the custody of his or her parent or legal guardian. The court shall also inform the parent or legal guardian that if the child cannot be returned home by the 12-month permanency hearing, a proceeding pursuant to Section 366.26 may be instituted. This section does not apply in a case where, pursuant to Section 361.5, the court has ordered that reunification services shall not be provided.

If the child was under the age of three years on the date of the initial removal, or is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5, and the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the child, who was under the age of three years on the date of initial removal or is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5, may be returned to his or her parent or legal guardian within six months or that reasonable services have not been provided, the court shall continue the case to the 12-month permanency hearing.

For the purpose of placing and maintaining a sibling group together in a permanent home, the court, in making its determination to schedule a hearing pursuant to Section 366.26 for some or all members of a sibling group, as described in paragraph (3) of subdivision (a) of Section 361.5, shall review and consider the social worker's report and recommendations. Factors the report shall address, and the court shall consider, may include, but need not be limited to, whether the sibling group was removed from parental care as a group, the closeness and strength of the sibling bond, the ages of the siblings, the appropriateness of maintaining the sibling group together, the detriment to the child if sibling ties are not maintained, the likelihood of finding a permanent home for the sibling group, whether the sibling group is currently placed together in a preadoptive home or has a concurrent plan goal of legal permanency in the same home, the wishes of each child whose age and physical and emotional condition permits a meaningful response, and the best interest of each child in the sibling group. The court shall specify the factual basis for its finding that it is in the best interest of each child to schedule a hearing pursuant to Section 366.26 in 120 days for some or all of the members of the sibling group.

If the child was removed initially under subdivision (g) of Section 300 and the court finds by clear and convincing evidence that the whereabouts of the parent are still unknown, or the parent has failed to contact and visit the child, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If the court finds by clear and convincing evidence that the parent has been convicted of a felony indicating parental unfitness, the court may schedule a hearing pursuant to Section 366.26 within 120 days.

If the child had been placed under court supervision with a previously noncustodial parent pursuant to Section 361.2, the court shall determine whether supervision is still necessary. The court may terminate supervision and transfer permanent custody to that parent, as provided for by paragraph (1) of subdivision (b) of Section 361.2.

In all other cases, the court shall direct that any reunification services previously ordered shall continue to be offered to the parent or legal guardian pursuant to the time periods set forth in subdivision (a) of Section 361.5, provided that the court may modify the terms and conditions of those services.

If the child is not returned to his or her parent or legal guardian, the court shall determine whether reasonable services that were designed to aid the parent or legal guardian in overcoming the problems that led to the initial removal and the continued custody of the child have been provided or offered to the parent or legal guardian. The court shall order that those services be initiated, continued, or terminated.

(f) The permanency hearing shall be held no later than 12 months after the date the child entered foster care, as that date is determined pursuant to subdivision (a) of Section 361.5. At the permanency hearing, the court shall determine the permanent plan for the child, which shall include a determination of whether the child will be returned to the child's home and, if so, when, within the time limits of subdivision (a) of Section 361.5. The court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The court shall also determine whether reasonable services that were designed to aid the parent or legal guardian to overcome the problems that led to the initial removal and continued custody of the child have been provided or offered to the parent or legal guardian. For each youth 16 years of age and older, the court shall also determine whether services have been made available to assist him or her in making the transition from foster care to independent living. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5, shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided, and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Whether or not the child is returned to his or her parent or legal guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental. The court also shall make a finding pursuant to subdivision (a) of Section 366.

(g) If the time period in which the court-ordered services were provided has met or exceeded the time period set forth in paragraph (1), (2), or (3) of subdivision (a) of Section 361.5, as appropriate, and a child is not returned to the custody of a parent or legal guardian at the permanency hearing held pursuant to subdivision (f), the court shall do one of the following:

(1) Continue the case for up to six months for a permanency review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or legal guardian. The court shall continue the case only if it

finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or legal guardian. For the purposes of this section, in order to find a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time, the court shall be required to find all of the following:

(A) That the parent or legal guardian has consistently and regularly contacted and visited with the child.

(B) That the parent or legal guardian has made significant progress in resolving problems that led to the child's removal from the home.

(C) The parent or legal guardian has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs.

For purposes of this subdivision, the court's decision to continue the case based on a finding or substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interests of the child.

The court shall inform the parent or legal guardian that if the child cannot be returned home by the next permanency review hearing, a proceeding pursuant to Section 366.26 may be instituted. The court may not order that a hearing pursuant to Section 366.26 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent or legal guardian.

(2) Order that a hearing be held within 120 days, pursuant to Section 366.26, but only if the court does not continue the case to the permanency planning review hearing and there is clear and convincing evidence that reasonable services have been provided or offered to the parents or legal guardians.

(3) Order that the child remain in long-term foster care, but only if the court finds by clear and convincing evidence, based upon the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship. For purposes of this section, a recommendation by the State Department of Social Services when it is acting as an adoption agency in counties that

are not served by a county adoption agency or by a licensed county adoption agency that adoption is not in the best interest of the child shall constitute a compelling reason for the court's determination. That recommendation shall be based on the present circumstances of the child and may not preclude a different recommendation at a later date if the child's circumstances change.

If the court orders that a child who is 10 years of age or older remain in long-term foster care at a group home for six months or longer from the date the child entered foster care, the court shall determine whether the agency has made reasonable efforts to maintain the child's relationships with individuals other than the child's siblings who are important to the child, consistent with the child's best interests, and may make any appropriate order to ensure that those relationships are maintained.

(h) In any case in which the court orders that a hearing pursuant to Section 366.26 shall be held, it shall also order the termination of reunification services to the parent or legal guardian. The court shall continue to permit the parent or legal guardian to visit the child pending the hearing unless it finds that visitation would be detrimental to the child. The court shall make any other appropriate orders to enable the child to maintain relationships with individuals, other than the child's siblings, who are important to the child, consistent with the child's best interests.

(i) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that shall include:

(1) Current search efforts for an absent parent or parents or legal guardians.

(2) A review of the amount of and nature of any contact between the child and his or her parents or legal guardians and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, ''extended family'' for the purpose of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial

rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3.

(5) The relationship of the child to any identified prospective adoptive parent or legal guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the child concerning placement and the adoption or guardianship, unless the child's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(6) A description of efforts to be made to identify a prospective adoptive parent or legal guardian, including, but not limited to, child specific recruitment and listing on an adoption exchange.

(7) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(j) If, at any hearing held pursuant to Section 366.26, a guardianship is established for the minor with a relative, and juvenile court dependency is subsequently dismissed, the relative shall be eligible for aid under the Kin-GAP program as provided in Article 4.5 (commencing with Section 11360) of Chapter 2 of Part 3 of Division 9.

(k) As used in this section, ''relative'' means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words ''great,'' ''great-great,'' or ''grand,'' or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

(*l*) For purposes of this section, evidence of any of the following circumstances may not, in and of itself, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to make and finalize a permanent placement for the child if efforts to reunify fail.

(3) Services to make and finalize a permanent placement for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

SEC. 4. Section 366.22 of the Welfare and Institutions Code is amended to read:

366.22. (a) When a case has been continued pursuant to paragraph (1) of subdivision (g) of Section 366.21, the permanency review hearing shall occur within 18 months after the date the child was originally removed from the physical custody of his or her parent or legal guardian.

The court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Whether or not the child is returned to his or her parent or legal guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that return would be detrimental.

If the child is not returned to a parent or legal guardian at the permanency review hearing, the court shall order that a hearing be held pursuant to Section 366.26 in order to determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child. However, if the court finds by clear and convincing evidence, based on the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, that there is a compelling reason, as described in paragraph (2) of subdivision (g) of Section 366.21, for determining that a hearing held under Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship, then the court may, only under these circumstances, order that the child remain in foster care. If the court orders that a child who is 10 years of age or older remain in long-term foster care at a group home for six months or longer from the date the child entered foster care, the court shall determine whether the agency has made reasonable efforts to maintain the child's relationships with individuals other than the child's siblings who are important to the child, consistent with the child's best interests, and may make any appropriate order to ensure that those relationships are maintained. The hearing shall be held no later than 120 days from the date of the permanency review hearing. The court shall also order termination of reunification services to the parent or legal

guardian. The court shall continue to permit the parent or legal guardian to visit the child unless it finds that visitation would be detrimental to the child. The court shall determine whether reasonable services have been offered or provided to the parent or legal guardian. For purposes of this subdivision, evidence of any of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to make and finalize a permanent placement for the child if efforts to reunify fail.

(3) Services to make and finalize a permanent placement for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

(b) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that shall include:

(1) Current search efforts for an absent parent or parents.

(2) A review of the amount of and nature of any contact between the child and his or her parents and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, ''extended family'' for the purposes of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed legal guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3.

(5) The relationship of the child to any identified prospective adoptive parent or legal guardian, the duration and character of the relationship, the motivation for seeking adoption or legal guardianship, and a statement from the child concerning placement and the adoption or legal guardianship, unless the child's age or physical, emotional, or

other condition precludes his or her meaningful response, and if so, a description of the condition.

(6) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(c) This section shall become operative January 1, 1999. If at any hearing held pursuant to Section 366.26, a legal guardianship is established for the minor with a relative, and juvenile court dependency is subsequently dismissed, the relative shall be eligible for aid under the Kin-GAP program as provided in Article 4.5 (commencing with Section 11360) of Chapter 2 of Part 3 of Division 9.

(d) As used in this section, ''relative'' means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words ''great,'' ''great-great,'' or ''grand,'' or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

SEC. 5. Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360. The procedures specified herein are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. Section 8714.7 of the Family Code is applicable and available to all dependent children meeting the requirements of that section, if the postadoption contact agreement has been entered into voluntarily. For children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent child of the juvenile court.

(b) At the hearing, that shall be held in juvenile court for all children who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these children, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties may present, and then shall make findings and orders in the following order of preference:

(1) Terminate the rights of the parent or parents and order that the child be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed

with the adoption after the appellate rights of the natural parents have been exhausted.

(2) On making a finding under paragraph (3) of subdivision (c), identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days.

(3) Appoint a legal guardian for the child and order that letters of guardianship issue.

(4) Order that the child be placed in long-term foster care, subject to the periodic review of the juvenile court under Section 366.3.

In choosing among the above alternatives the court shall proceed pursuant to subdivision (c).

(c) (1) If the court determines, based on the assessment provided as ordered under subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22, and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. The fact that the child is not yet placed in a preadoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child will be adopted. A finding under subdivision (b) or paragraph (1) of subdivision (e) of Section 361.5 that reunification services shall not be offered, under subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or, under Section 366.21 or 366.22, that the court has continued to remove the child from the custody of the parent or guardian and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights unless the court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

(B) A child 12 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The child is living with a relative or foster parent who is unable or unwilling to adopt the child because of exceptional circumstances, that do not include an unwillingness to accept legal or financial

responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment and the removal of the child from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the child. This subparagraph does not apply to any child who is living with a nonrelative and who is either (i) under six years of age or (ii) a member of a sibling group where at least one child is under six years of age and the siblings are, or should be, permanently placed together.

(E) There would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption.

If the court finds that termination of parental rights would be detrimental to the child pursuant to subparagraph (A), (B), (C), (D), or (E), it shall state its reasons in writing or on the record.

(2) The court shall not terminate parental rights if at each and every hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the child pursuant to paragraph (1) and that the child has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days. During this 180-day period, the public agency responsible for seeking adoptive parents for each child shall, to the extent possible, ask each child who is 10 years of age or older who is placed in a group home for six months or longer from the date the child entered foster care, to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential adoptive parents. The public agency may ask any other child to provide that information, as appropriate. During the 180-day period, the public agency shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. During the 180-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1) or (3)

of subdivision (b). For purposes of this section, a child may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the child because of the child's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the child is the age of seven years or more.

(4) (A) If the court finds that adoption of the child or termination of parental rights is not in the best interest of the child, because one of the conditions in subparagraph (A), (B), (C), (D), or (E) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the child or order that the child remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. A child who is 10 years of age or older who is placed in a group home for six months or longer from the date the child entered foster care, shall be asked to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential guardians. The agency may ask any other child to provide that information, as appropriate.

(B) If the child is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the child shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the child because the child has substantial psychological ties to the relative caretaker or foster parents.

(C) The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the child.

(5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the child with a stable and permanent environment, the court may order the care, custody, and control of the child transferred from the county welfare department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director regarding the suitability of the transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the child in a suitable licensed or exclusive-use home that has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the child and providing appropriate services to the child, including those services ordered by the court.

Responsibility for the support of the child shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the child. Those children whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a child who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanent plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) The proceeding for the adoption of a child who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanent plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The full report required by Section 8715 of the Family Code shall be read and considered by the court prior to the adoption and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a child who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of a petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the child or the parents are not being represented by previously retained or appointed counsel, the court shall proceed as follows:

(1) In accordance with subdivision (c) of Section 317, if a child before the court is without counsel, the court shall appoint counsel unless the court finds that the child would not benefit from the appointment of counsel. The court shall state on the record its reasons for that finding.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the child and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the child, in any proportions the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h) (1) At all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child.

(2) In accordance with Section 349, the child shall be present in court if the child or the child's counsel so requests or the court so orders. If the child is 10 years of age or older and is not present at a hearing held pursuant to this section, the court shall determine whether the minor was properly notified of his or her right to attend the hearing and inquire as to the reason why the child is not present.

(3) (A) The testimony of the child may be taken in chambers and outside the presence of the child's parent or parents, if the child's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:

(i) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(ii) The child is likely to be intimidated by a formal courtroom setting.

(iii) The child is afraid to testify in front of his or her parent or parents.

(B) After testimony in chambers, the parent or parents of the child may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

(C) The testimony of a child also may be taken in chambers and outside the presence of the guardian or guardians of a child under the circumstances specified in this subdivision.

(i) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the child, upon the parent or parents and upon all other persons who have been served with citation by publication or otherwise as provided in this chapter. After making the order, the court shall have no power to set aside, change, or modify it, but nothing in this section shall be construed to limit the right to appeal the order.

(j) If the court, by order or judgment, declares the child free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the child referred to the State Department of Social Services or a licensed adoption

agency for adoptive placement by the agency. However, a petition for adoption may not be granted until the appellate rights of the natural parents have been exhausted. The State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the child and shall be entitled to the exclusive care and control of the child at all times until a petition for adoption is granted. With the consent of the agency, the court may appoint a guardian of the child, who shall serve until the child is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's emotional well-being.

As used in this subdivision, ''preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(*l*) (1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following applies:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if the party is present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21 and 366.22 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

(m) Except for subdivision (j), this section shall also apply to minors adjudged wards pursuant to Section 727.31.

SEC. 5.5. Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360. The procedures specified herein are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. Section 8714.7 of the Family Code is applicable and available to all dependent children meeting the requirements of that section, if the postadoption contact agreement has been entered into voluntarily. For children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent child of the juvenile court.

(b) At the hearing that shall be held in juvenile court for all children who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these children, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties may present, and then shall make findings and orders in the following order of preference:

(1) Terminate the rights of the parent or parents and order that the child be placed for adoption and, upon the filing of a petition for adoption

in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) On making a finding under paragraph (3) of subdivision (c), identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days.

(3) Appoint a legal guardian for the child and order that letters of guardianship issue.

(4) Order that the child be placed in long-term foster care, subject to the periodic review of the juvenile court under Section 366.3.

In choosing among the above alternatives the court shall proceed pursuant to subdivision (c).

(c) (1) If the court determines, based on the assessment provided as ordered under subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22, and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. The fact that the child is not yet placed in a preadoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child will be adopted. A finding under subdivision (b) or paragraph (1) of subdivision (e) of Section 361.5 that reunification services shall not be offered, under subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or, under Section 366.21 or 366.22, that the court has continued to remove the child from the custody of the parent or guardian and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights unless the court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

(B) A child 12 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The child is living with a relative or foster parent who is unable or unwilling to adopt the child because of exceptional circumstances,

that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment and the removal of the child from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the child. This subparagraph does not apply to any child who is living with a nonrelative and who is either (i) under six years of age or (ii) a member of a sibling group where at least one child is under six years of age and the siblings are, or should be, permanently placed together.

(E) There would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption.

If the court finds that termination of parental rights would be detrimental to the child pursuant to subparagraph (A), (B), (C), (D), or (E), it shall state its reasons in writing or on the record.

(2) The court shall not terminate parental rights if at each and every hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the child pursuant to paragraph (1) and that the child has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days. During this 180-day period, the public agency responsible for seeking adoptive parents for each child shall, to the extent possible, ask each child who is 10 years of age or older who is placed in a group home for six months or longer from the date the child entered foster care, to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential adoptive parents. The public agency may ask any other child to provide that information, as appropriate. During the 180-day period, the public agency shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. During the 180-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing

shall be held and the court shall proceed pursuant to paragraph (1), (3), or (4) of subdivision (b). For purposes of this section, a child may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the child because of the child's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the child is the age of seven years or more.

(4) (A) If the court finds that adoption of the child or termination of parental rights is not in the best interest of the child, because one of the conditions in subparagraph (A), (B), (C), (D), or (E) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the child or order that the child remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. A child who is 10 years of age or older who is placed in a group home for six months or longer from the date the child entered foster care, shall be asked to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential guardians. The agency may ask any other child to provide that information, as appropriate.

(B) If the child is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the child shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the child because the child has substantial psychological ties to the relative caretaker or foster parents.

(C) The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the child.

(5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the child with a stable and permanent environment, the court may order the care, custody, and control of the child transferred from the county welfare department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director regarding the suitability of the transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the child in a suitable licensed or exclusive-use home that has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the child and providing appropriate services

to the child, including those services ordered by the court. Responsibility for the support of the child shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the child. Those children whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a child who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanent plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) The proceeding for the adoption of a child who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanent plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The full report required by Section 8715 of the Family Code shall be read and considered by the court prior to the adoption and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a child who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of a petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the child or the parents are not being represented by previously retained or appointed counsel, including, in the case of any child who is not a legal permanent resident or citizen of the United States, counsel appointed pursuant to subdivision (i) of Section 317, the court shall proceed as follows:

(1) In accordance with subdivision (c) of Section 317, if a child before the court is without counsel, the court shall appoint counsel unless the court finds that the child would not benefit from the appointment of counsel. The court shall state on the record its reasons for that finding.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the child and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the child, in any proportions the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h) (1) At all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child.

(2) In accordance with Section 349, the child shall be present in court if the child or the child's counsel so requests or the court so orders. If the child is 10 years of age or older and is not present at a hearing held pursuant to this section, the court shall determine whether the minor was properly notified of his or her right to attend the hearing and inquire as to the reason why the child is not present.

(3) (A) The testimony of the child may be taken in chambers and outside the presence of the child's parent or parents if the child's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:

(i) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(ii) The child is likely to be intimidated by a formal courtroom setting.

(iii) The child is afraid to testify in front of his or her parent or parents.

(B) After testimony in chambers, the parent or parents of the child may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

(C) The testimony of a child also may be taken in chambers and outside the presence of the guardian or guardians of a child under the circumstances specified in this subdivision.

(i) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the child, upon the parent or parents and upon all other persons who have been served with citation by publication or otherwise as provided in this chapter. After making the order, the court shall have no power to set aside,

change, or modify it, but nothing in this section shall be construed to limit the right to appeal the order.

(j) If the court, by order or judgment declares the child free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the child referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, a petition for adoption may not be granted until the appellate rights of the natural parents have been exhausted. The State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the child and shall be entitled to the exclusive care and control of the child at all times until a petition for adoption is granted. With the consent of the agency, the court may appoint a guardian of the child, who shall serve until the child is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's emotional well-being.

As used in this subdivision, ''preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(*l*) (1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following applies:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement

of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if the party is present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21 and 366.22 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

(m) Except for subdivision (j), this section shall also apply to minors adjudged wards pursuant to Section 727.31.

SEC. 6. Section 366.3 of the Welfare and Institutions Code is amended to read:

366.3. (a) If a juvenile court orders a permanent plan of adoption or legal guardianship pursuant to Section 360 or 366.26, the court shall retain jurisdiction over the child until the child is adopted or the legal guardianship is established, except as provided for in Section 366.29. The status of the child shall be reviewed every six months to ensure that the adoption or legal guardianship is completed as expeditiously as possible. When the adoption of the child has been granted, the court shall terminate its jurisdiction over the child. Following establishment of a legal guardianship, the court may continue jurisdiction over the child as a dependent child of the juvenile court or may terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the legal guardianship, as authorized by Section 366.4. If, however, a relative of the child is appointed the legal guardian of the child and the child has been placed with the relative for at least 12 months, the court shall, except if the relative guardian objects, or upon a finding of exceptional circumstances, terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship, as authorized by Section 366.4. Following a termination of parental rights the parent

or parents shall not be a party to, or receive notice of, any subsequent proceedings regarding the child.

(b) If the court has dismissed dependency jurisdiction following the establishment of a legal guardianship, or no dependency jurisdiction attached because of the granting of a legal guardianship pursuant to Section 360, and the legal guardianship is subsequently revoked or otherwise terminated, the county department of social services or welfare department shall notify the juvenile court of this fact. The court may vacate its previous order dismissing dependency jurisdiction over the child.

Notwithstanding Section 1601 of the Probate Code, the proceedings to terminate a legal guardianship that has been granted pursuant to Section 360 or 366.26 shall be held in the juvenile court, unless the termination is due to the emancipation or adoption of the child. Prior to the hearing on a petition to terminate legal guardianship pursuant to this paragraph, the court shall order the county department of social services or welfare department to prepare a report, for the court's consideration, that shall include an evaluation of whether the child could safely remain in the legal guardian's home, without terminating the legal guardianship, if services were provided to the child or legal guardian. If applicable, the report shall also identify recommended services to maintain the legal guardianship and set forth a plan for providing those services. If the petition to terminate legal guardianship is granted, the juvenile court may resume dependency jurisdiction over the child, and may order the county department of social services or welfare department to develop a new permanent plan, which shall be presented to the court within 60 days of the termination. If no dependency jurisdiction has attached, the social worker shall make any investigation he or she deems necessary to determine whether the child may be within the jurisdiction of the juvenile court, as provided in Section 328.

Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the legal guardianship has been revoked or terminated and shall be entitled to participate in the new permanency planning hearing. The court shall try to place the child in another permanent placement. At the hearing, the parents may be considered as custodians but the child shall not be returned to the parent or parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the child. The court may, if it is in the best interests of the child, order that reunification services again be provided to the parent or parents.

(c) If, following the establishment of a legal guardianship, the county welfare department becomes aware of changed circumstances that indicate adoption may be an appropriate plan for the child, the department shall so notify the court. The court may vacate its previous

order dismissing dependency jurisdiction over the child and order that a hearing be held pursuant to Section 366.26 to determine whether adoption or continued legal guardianship is the most appropriate plan for the child. The hearing shall be held no later than 120 days from the date of the order. If the court orders that a hearing shall be held pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services if it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment under subdivision (b) of Section 366.22.

(d) If the child is in a placement other than the home of a legal guardian and jurisdiction has not been dismissed, the status of the child shall be reviewed at least every six months. The review of the status of a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption shall be conducted by the court. The review of the status of a child for whom the court has not ordered parental rights terminated and who has not been ordered placed for adoption may be conducted by the court or an appropriate local agency. The court shall conduct the review under the following circumstances:

(1) Upon the request of the child's parents or legal guardians.

(2) Upon the request of the child.

(3) It has been 12 months since a hearing held pursuant to Section 366.26 or an order that the child remain in long-term foster care pursuant to Section 366.21, 366.22, 366.26, or subdivision (g).

(4) It has been 12 months since a review was conducted by the court.

The court shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

(e) Except as provided in subdivision (f), at the review held every six months pursuant to subdivision (d), the reviewing body shall inquire about the progress being made to provide a permanent home for the child, shall consider the safety of the child, and shall determine all of the following:

(1) The continuing necessity for and appropriateness of the placement.

(2) Identification of individuals other than the child's siblings who are important to a child who is 10 years of age or older who is in out-of-home placement in a group home for six months or longer from the date the child entered foster care, 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 placed in a group home for six months or longer from the date the child entered foster care to identify individuals other than the child's siblings who are important

to the child, and may ask any other child 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.

(3) The continuing appropriateness and extent of compliance with the permanent plan for the child, including efforts to maintain relationships between a child who is 10 years of age or older and has been in out-of-home placement in a group home for six months or longer from the date the child entered foster care and individuals who are important to the child and efforts to identify a prospective adoptive parent or legal guardian, including, but not limited to, child specific recruitment efforts and listing on an adoption exchange.

(4) The extent of the agency's compliance with the child welfare services case plan in making reasonable efforts to return the child to a safe home and to complete whatever steps are necessary to finalize the permanent placement of the child.

(5) Whether there should be any limitation on the right of the parent or guardian to make educational decisions for the child. That limitation shall be specifically addressed in the court order and may not exceed what is necessary to protect the child. If the court specifically limits the right of the parent or guardian to make educational decisions for the child, the court shall at the same time appoint a responsible adult to make educational decisions for the child pursuant to Section 361.

(6) The adequacy of services provided to the child. The court shall consider the progress in providing the information and documents to the child, as described in Section 391. The court shall also consider the need for, and progress in providing, the assistance and services described in paragraphs (3) and (4) of subdivision (b) of Section 391.

(7) The extent of progress the parents or legal guardians have made toward alleviating or mitigating the causes necessitating placement in foster care.

(8) The likely date by which the child may be returned to and safely maintained in the home, placed for adoption, legal guardianship, or in another planned permanent living arrangement.

(9) Whether the child has any siblings under the court's jurisdiction, and, if any siblings exist, all of the following:

(A) The nature of the relationship between the child and his or her siblings.

(B) The appropriateness of developing or maintaining the sibling relationships pursuant to Section 16002.

(C) If the siblings are not placed together in the same home, why the siblings are not placed together and what efforts are being made to place the siblings together, or why those efforts are not appropriate.

(D) If the siblings are not placed together, the frequency and nature of the visits between siblings.

(E) The impact of the sibling relationships on the child's placement and planning for legal permanence.

The factors the court may consider as indicators of the nature of the child's sibling relationships include, but are not limited to, whether the siblings were raised together in the same home, whether the siblings have shared significant common experiences or have existing close and strong bonds, whether either sibling expresses a desire to visit or live with his or her sibling, as applicable, and whether ongoing contact is in the child's best emotional interests.

(10) For a child who is 16 years of age or older, the services needed to assist the child to make the transition from foster care to independent living.

The reviewing body shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

Each licensed foster family agency shall submit reports for each child in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the child's permanent plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the child.

Unless their parental rights have been permanently terminated, the parent or parents of the child are entitled to receive notice of, and participate in, those hearings. It shall be presumed that continued care is in the best interests of the child, unless the parent or parents prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the child. In those cases, the court may order that further reunification services to return the child to a safe home environment be provided to the parent or parents for a period not to exceed six months.

(f) At the review conducted by the court and held at least every six months, regarding a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption, the county welfare department shall prepare and present to the court a report describing the following:

(1) The child's present placement.

(2) The child's current physical, mental, emotional, and educational status.

(3) If the child has not been placed with a prospective adoptive parent or guardian, 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 agency shall ask

every child who is 10 years of age or older to identify any individuals who are important to him or her, consistent with the child's best interest, and may ask any child who is younger than 10 years of age to provide that information as appropriate. The agency shall make efforts to identify other individuals who are important to the child.

(4) Whether the child has been placed with a prospective adoptive parent or parents.

(5) Whether an adoptive placement agreement has been signed and filed.

(6) If the child has not been placed with a prospective adoptive parent or parents, the efforts made to identify an appropriate prospective adoptive parent or legal guardian, including, but not limited to, child specific recruitment efforts and listing on an adoption exchange.

(7) Whether the final adoption order should include provisions for postadoptive sibling contact pursuant to Section 366.29.

(8) The progress of the search for an adoptive placement if one has not been identified.

(9) Any impediments to the adoption or the adoptive placement.

(10) The anticipated date by which the child will be adopted, or placed in an adoptive home.

(11) The anticipated date by which an adoptive placement agreement will be signed.

(12) Recommendations for court orders that will assist in the placement of the child for adoption or in the finalization of the adoption.

The court shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

The court shall make appropriate orders to protect the stability of the child and to facilitate and expedite the permanent placement and adoption of the child.

(g) At the review held pursuant to subdivision (d) for a child in long-term foster care, the court shall consider all permanency planning options for the child including whether the child should be returned to the home of the parent, placed for adoption, or appointed a legal guardian, or, if compelling reasons exist for finding that none of the foregoing options are in the best interest of the child, whether the child should be placed in another planned permanent living arrangement. The court shall order that a hearing be held pursuant to Section 366.26 unless it determines by clear and convincing evidence, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is being returned to the home of the parent, the child is not a proper subject for adoption, or no one is willing to accept legal guardianship. If the licensed county adoption agency, or the department when it is acting as an adoption agency in counties that are not served by a county

adoption agency, has determined it is unlikely that the child will be adopted or one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, that fact shall constitute a compelling reason for purposes of this subdivision. Only upon that determination may the court order that the child remain in foster care, without holding a hearing pursuant to Section 366.26.

(h) If, as authorized by subdivision (g), the court orders a hearing pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment as provided for in subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22. A hearing held pursuant to Section 366.26 shall be held no later than 120 days from the date of the 12-month review at which it is ordered, and at that hearing the court shall determine whether adoption, legal guardianship, or long-term foster care is the most appropriate plan for the child.

SEC. 7. Section 391 of the Welfare and Institutions Code is amended to read:

391. At any hearing to terminate jurisdiction over a dependent child who has reached the age of majority the county welfare department shall do both of the following:

(a) Ensure that the child is present in court, unless the child does not wish to appear in court, or document efforts by the county welfare department to locate the child when the child is not available.

(b) Submit a report verifying that the following information, documents, and services have been provided to the child:

(1) Written information concerning the child's dependency case, including his or her family history and placement history, the whereabouts of any siblings under the jurisdiction of the juvenile court, unless the court determines that sibling contact would jeopardize the safety or welfare of the sibling, directions on how to access the documents the child is entitled to inspect under Section 827, and the date on which the jurisdiction of the juvenile court would be terminated.

(2) The following documents, where applicable: social security card, certified birth certificate, identification card, as described in Section 13000 of the Vehicle Code, death certificate of parent or parents, and proof of citizenship or residence.

(3) Assistance in completing an application for Medi-Cal or assistance in obtaining other health insurance; referral to transitional housing, if available, or assistance in securing other housing; and assistance in obtaining employment or other financial support.

(4) Assistance in applying for admission to college or to a vocational training program or other educational institution and in obtaining financial aid, where appropriate.

(5) Assistance in maintaining relationships with individuals who are important to a child who has been in out-of-home placement in a group home for six months or longer from the date the child entered foster care, based on the child's best interests.

(c) The court may continue jurisdiction if it finds that the county welfare department has not met the requirements of subdivision (b) and that termination of jurisdiction would be harmful to the best interests of the child. If the court determines that continued jurisdiction is warranted pursuant to this section, the continuation shall only be ordered for that period of time necessary for the county welfare department to meet the requirements of subdivision (b). This section shall not be construed to limit the discretion of the juvenile court to continue jurisdiction for other reasons. The court may terminate jurisdiction if the county welfare department has offered the required services, and the child either has refused the services or, after reasonable efforts by the county welfare department, cannot be located.

(d) The Judicial Council shall develop and implement standards, and develop and adopt appropriate forms, necessary to implement this section.

SEC. 8. Section 10609.4 of the Welfare and Institutions Code is amended to read:

10609.4. (a) On or before July 1, 2000, the State Department of Social Services, in consultation with county and state representatives, foster youth, and advocates, shall do both of the following:

(1) Develop statewide standards for the implementation and administration of the Independent Living Program established pursuant to the federal Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272).

(2) Define the outcomes for the Independent Living Program and the characteristics of foster youth enrolled in the program for data collection purposes.

(b) Each county department of social services shall include in its annual Independent Living Program report both of the following:

(1) An accounting of federal and state funds allocated for implementation of the program. Expenditures shall be related to the specific purposes of the program. Program purposes may include, but are not limited to, all of the following:

(A) Enabling participants to seek a high school diploma or its equivalent or to take part in appropriate vocational training, and providing job readiness training and placement services, or building work experience and marketable skills, or both.

(B) Providing training in daily living skills, budgeting, locating and maintaining housing, and career planning.

(C) Providing for individual and group counseling.

(D) Integrating and coordinating services otherwise available to participants.

(E) Providing each participant with a written transitional independent living plan that will be based on an assessment of his or her needs, that includes information provided by persons who have been identified by the participant as important to the participant in cases in which the participant has been in out-of-home placement in a group home for six months or longer from the date the participant entered foster care, consistent with the participant's best interests, and that will be incorporated into his or her case plan.

(F) Providing participants with other services and assistance designed to improve independent living.

(G) Convening persons who have been identified by the participant as important to him or her for the purpose of providing information to be included in his or her written transitional independent living plan.

(2) A detail of the characteristics of foster youth enrolled in their independent living programs and the outcomes achieved based on the information developed by the department pursuant to subdivision (a).

(c) In consultation with the department, a county may use different methods and strategies to achieve the standards and outcomes of the Independent Living Program developed pursuant to subdivision (a).

(d) In consultation with the County Welfare Directors Association, the California Youth Connection, and other stakeholders, the department shall develop and adopt emergency regulations in accordance with Section 11346.1 of the Government Code that counties shall be required to meet when administering the Independent Living Program and that are achievable within existing program resources. The initial adoption of emergency regulations and one readoption of the initial regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. Initial emergency regulations and the first readoption of those regulations shall be exempt from review by the Office of Administrative Law. The initial emergency regulations and the first readoption of those regulations authorized by this subdivision shall be submitted to the Office of Administrative Law for filing with the Secretary of State and each shall remain in effect for no more than 180 days.

SEC. 9. Section 16131.5 is added to the Welfare and Institutions Code, to read:

16131.5. The state shall reinvest any incentive payments received through the implementation of the federal Adoption Promotion Act of 2003 (Public Law 108-145) for placement of older children, as defined

in that act, into the child welfare system, in order to provide adoption services for older children. Nothing in this section shall be construed to supplant funds currently being spent on programs to provide adoption services.

SEC. 10. 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 30 days of the initial removal of the child or of the in-person response required under subdivision (f) of Section 16501, if the child has not been removed from his or her home, or by the date of the dispositional hearing pursuant to Section 358, whichever occurs first. The case plan shall be updated, as the service needs of the child and family dictate. At a minimum, the case plan shall be updated in conjunction with each status review hearing conducted pursuant to Section 366.21, and the hearing conducted pursuant to Section 366.26, but no less frequently than once every six months. Each updated case plan shall include a description of the services that have been provided to the child under the plan and an evaluation of the appropriateness and effectiveness of those services.

(e) The child welfare services case plan shall be comprehensive enough to meet the juvenile court dependency proceedings requirements pursuant to Article 6 (commencing with Section 300) of Chapter 2 of Part 1 of Division 2.

(f) The case plan shall be developed as follows:

(1) The case plan shall be based upon an assessment of the circumstances that required child welfare services intervention.

(2) The case plan shall identify specific goals and the appropriateness of the planned services in meeting those goals.

(3) The case plan shall identify the original allegations of abuse or neglect, as defined in Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code, or the conditions cited as the basis for declaring the child a dependent of the court pursuant to Section 300, or all of these, and the other precipitating incidents that led to child welfare services intervention.

(4) The case plan shall include a description of the schedule of the social worker contacts with the child and the family or other caretakers. The frequency of these contacts shall be in accordance with regulations adopted by the State Department of Social Services. If the child has been placed in foster care out of state, the county social worker or a social worker on the staff of the social 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, consistent with the child's best interests, 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 placed in a group home for six months or longer from the date the child entered foster care to identify

individuals other than the child's siblings who are important to the child, and may ask any other child 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. 10.5. 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 the 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, consistent with the child's best interests, 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 placed in a group home for six months or longer from the date the child entered foster care to identify individuals other than the child's siblings who are important to the child, and may ask any other child 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. 11. Section 3.5 of this bill incorporates amendments to Section 366.21 of the Welfare and Institutions Code proposed by both this bill and AB 3079. 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 366.21 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 3079, in which case Section 3 of this bill shall not become operative.

SEC. 12. Section 5.5 of this bill incorporates amendments to Section 366.26 of the Welfare and Institutions Code proposed by both this bill and AB 1895. 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 366.26 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 1895, in which case Section 5 of this bill shall not become operative.

SEC. 13. Section 10.5 of this bill incorporates amendments to Section 16501.1 of the Welfare and Institutions Code proposed by both this bill and AB 2795. 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 16501.1 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 2795, in which case Section 10 of this bill shall not become operative.

CHAPTER 811

An act to amend Sections 3110.5, 6222, and 7120 of the Family Code, to amend Sections 6103.2, 68085, 68115, 68502.7, 68926, 68927, 71622, 72190, and 77006.5 of, and to repeal Section 72407 of, the Government Code, and to amend Sections 366.21 and 16010.6 of the Welfare and Institutions Code, relating to the courts.

[Approved by Governor September 27, 2004. Filed with Secretary of State September 27, 2004.]

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

SECTION 1. Section 3110.5 of the Family Code is amended to read:

3110.5. (a) No person may be a court-connected or private child custody evaluator under this chapter unless the person has completed the domestic violence and child abuse training program described in Section 1816 and has complied with Rules 5.220 and 5.230 of the California Rules of Court.

(b) (1) On or before January 1, 2002, the Judicial Council shall formulate a statewide rule of court that establishes education, experience, and training requirements for all child custody evaluators appointed pursuant to this chapter, Section 730 of the Evidence Code, or Section 2032 of the Code of Civil Procedure.

(A) The rule shall require a child custody evaluator to declare under penalty of perjury that he or she meets all of the education, experience, and training requirements specified in the rule and, if applicable, possesses a license in good standing. The Judicial Council shall establish forms to implement this section. The rule shall permit court-connected evaluators to conduct evaluations if they meet all of the qualifications established by the Judicial Council. The education, experience, and training requirements to be specified for court-connected evaluators shall include, but not be limited to, knowledge of the psychological and developmental needs of children and parent-child relationships.

(B) The rule shall require all evaluators to utilize comparable interview, assessment, and testing procedures for all parties that are consistent with generally accepted clinical, forensic, scientific, diagnostic, or medical standards. The rule shall also require evaluators to inform each adult party of the purpose, nature, and method of the evaluation.

(C) The rule may allow courts to permit the parties to stipulate to an evaluator of their choosing with the approval of the court under the circumstances set forth in subdivision (d). The rule may require courts to provide general information about how parties can contact qualified child custody evaluators in their county.

(2) On or before January 1, 2004, the Judicial Council shall include in the statewide rule of court created pursuant to this section a requirement that all court-connected and private child custody evaluators receive training in the nature of child sexual abuse. The Judicial Council shall develop standards for this training that shall include, but not be limited to, the following:

(A) Children's patterns of hiding and disclosing sexual abuse occurring in a family setting.

(B) The effects of sexual abuse on children.

(C) The nature and extent of child sexual abuse.

(D) The social and family dynamics of child sexual abuse.

(E) Techniques for identifying and assisting families affected by child sexual abuse.

(F) Legal rights, protections, and remedies available to victims of child sexual abuse.

(c) In addition to the education, experience, and training requirements established by the Judicial Council pursuant to subdivision (b), on or after January 1, 2005, no person may be a child custody evaluator under this chapter, Section 730 of the Evidence Code, or Section 2032 of the Code of Civil Procedure unless the person meets one of the following criteria:

(1) He or she is licensed as a physician under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code and either is a board certified psychiatrist or has completed a residency in psychiatry.

(2) He or she is licensed as a psychologist under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(3) He or she is licensed as a marriage and family therapist under Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(4) He or she is licensed as a clinical social worker under Article 4 (commencing with Section 4996) of Chapter 14 of Division 2 of the Business and Professions Code.

(5) He or she is a court-connected evaluator who has been certified by the court as meeting all of the qualifications for court-connected evaluators as specified by the Judicial Council pursuant to subdivision (b).

(d) Subdivision (c) does not apply in any case where the court determines that there are no evaluators who meet the criteria of subdivision (c) who are willing and available, within a reasonable period of time, to perform child custody evaluations. In those cases, the parties may stipulate to an individual who does not meet the criteria of subdivision (c), subject to approval by the court.

(e) A child custody evaluator who is licensed by the Medical Board of California, the Board of Psychology, or the Board of Behavioral Sciences shall be subject to disciplinary action by that board for unprofessional conduct, as defined in the licensing law applicable to that licensee.

(f) On or after January 1, 2005, a court-connected or private child custody evaluator may not evaluate, investigate, or mediate an issue of child custody in a proceeding pursuant to this division unless that person has completed child sexual abuse training as required by this section.

SEC. 1.5. Section 3110.5 of the Family Code is amended to read:

3110.5. (a) No person may be a court-connected or private child custody evaluator under this chapter unless the person has completed the domestic violence and child abuse training program described in Section 1816 and has complied with Rules 5.220 and 5.230 of the California Rules of Court.

(b) (1) On or before January 1, 2002, the Judicial Council shall formulate a statewide rule of court that establishes education, experience, and training requirements for all child custody evaluators appointed pursuant to this chapter, Section 730 of the Evidence Code, or Chapter 15 (commencing with Section 2032.010) of Title 4 of Part 4 of the Code of Civil Procedure.

(A) The rule shall require a child custody evaluator to declare under penalty of perjury that he or she meets all of the education, experience, and training requirements specified in the rule and, if applicable, possesses a license in good standing. The Judicial Council shall establish forms to implement this section. The rule shall permit court-connected evaluators to conduct evaluations if they meet all of the qualifications established by the Judicial Council. The education, experience, and training requirements to be specified for court-connected evaluators shall include, but not be limited to, knowledge of the psychological and developmental needs of children and parent-child relationships.

(B) The rule shall require all evaluators to utilize comparable interview, assessment, and testing procedures for all parties that are consistent with generally accepted clinical, forensic, scientific, diagnostic, or medical standards. The rule shall also require evaluators to inform each adult party of the purpose, nature, and method of the evaluation.

(C) The rule may allow courts to permit the parties to stipulate to an evaluator of their choosing with the approval of the court under the circumstances set forth in subdivision (d). The rule may require courts to provide general information about how parties can contact qualified child custody evaluators in their county.

(2) On or before January 1, 2004, the Judicial Council shall include in the statewide rule of court created pursuant to this section a requirement that all court-connected and private child custody evaluators receive training in the nature of child sexual abuse. The Judicial Council shall develop standards for this training that shall include, but not be limited to, the following:

(A) Children's patterns of hiding and disclosing sexual abuse occurring in a family setting.

(B) The effects of sexual abuse on children.

(C) The nature and extent of child sexual abuse.

(D) The social and family dynamics of child sexual abuse.

(E) Techniques for identifying and assisting families affected by child sexual abuse.

(F) Legal rights, protections, and remedies available to victims of child sexual abuse.

(c) In addition to the education, experience, and training requirements established by the Judicial Council pursuant to subdivision (b), on or after January 1, 2005, no person may be a child custody evaluator under this chapter, Section 730 of the Evidence Code, or Chapter 15 (commencing with Section 2032.010) of Title 4 of Part 4 of the Code of Civil Procedure unless the person meets one of the following criteria:

(1) He or she is licensed as a physician under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code and either is a board certified psychiatrist or has completed a residency in psychiatry.

(2) He or she is licensed as a psychologist under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(3) He or she is licensed as a marriage and family therapist under Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(4) He or she is licensed as a clinical social worker under Article 4 (commencing with Section 4996) of Chapter 14 of Division 2 of the Business and Professions Code.

(5) He or she is a court-connected evaluator who has been certified by the court as meeting all of the qualifications for court-connected evaluators as specified by the Judicial Council pursuant to subdivision (b).

(d) Subdivision (c) does not apply in any case where the court determines that there are no evaluators who meet the criteria of subdivision (c) who are willing and available, within a reasonable period of time, to perform child custody evaluations. In those cases, the parties may stipulate to an individual who does not meet the criteria of subdivision (c), subject to approval by the court.

(e) A child custody evaluator who is licensed by the Medical Board of California, the Board of Psychology, or the Board of Behavioral Sciences shall be subject to disciplinary action by that board for unprofessional conduct, as defined in the licensing law applicable to that licensee.

(f) On or after January 1, 2005, a court-connected or private child custody evaluator may not evaluate, investigate, or mediate an issue of child custody in a proceeding pursuant to this division unless that person has completed child sexual abuse training as required by this section.

SEC. 2. Section 6222 of the Family Code, as amended by Section 3 of Chapter 1009 of the Statutes of 2002, is amended to read:

6222. (a) There is no filing fee for an application, a responsive pleading, or an order to show cause that seeks to obtain, modify, or enforce a protective order or other order authorized by this division if the request for the other order is necessary to obtain or give effect to a protective order. There is no fee for a subpoena filed in connection with that application, responsive pleading, or order to show cause.

(b) Fees otherwise payable by a petitioner to a law enforcement agency for serving an order issued under this division may be waived in any case in which the petitioner has requested a fee waiver on the initiating petition and has filed a declaration that demonstrates, to the satisfaction of the court, the financial need of the petitioner for the fee waiver. If the petitioner is not eligible for the fee waiver pursuant to this subdivision, he or she may be eligible pursuant to paragraph (1) of subdivision (q) of Section 527.6 of the Code of Civil Procedure.

(c) The declaration required by subdivision (b) shall be on one of the following forms:

(1) The form formulated and adopted by the Judicial Council for litigants proceeding in forma pauperis pursuant to Section 68511.3 of the Government Code, but the petitioner is not subject to any other requirements of litigants proceeding in forma pauperis.

(2) Any other form that the Judicial Council may adopt for this purpose pursuant to Section 6226.

(d) In conjunction with a hearing pursuant to this division, the court may make an order for the waiver of fees otherwise payable by the petitioner to a law enforcement agency for serving an order issued under this division.

(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. Section 7120 of the Family Code is amended to read:

7120. (a) A minor may petition the superior court of the county in which the minor resides or is temporarily domiciled for a declaration of emancipation.

(b) The petition shall set forth with specificity all of the following facts:

(1) The minor is at least 14 years of age.

(2) The minor willingly lives separate and apart from the minor's parents or guardian with the consent or acquiescence of the minor's parents or guardian.

(3) The minor is managing his or her own financial affairs. As evidence of this, the minor shall complete and attach a declaration of income and expenses as provided in Judicial Council form FL-150.

(4) The source of the minor's income is not derived from any activity declared to be a crime by the laws of this state or the laws of the United States.

SEC. 4. Section 6103.2 of the Government Code, as amended by Section 5 of Chapter 1009 of the Statutes of 2002, is amended to read:

6103.2. (a) Section 6103 does not apply to any fee or charge or expense for official services rendered by a sheriff or marshal in connection with the levy of writs of attachment, execution, possession, or sale. The fee, charge, or expense may be advanced to the sheriff or marshal, as otherwise required by law.

(b) (1) Notwithstanding Section 6103, the sheriff or marshal, in connection with the service of process or notices, may require that all fees that a public agency, or any person or entity, is required to pay under provisions of law other than this section, be prepaid by a public agency named in Section 6103, or by any person or entity, prior to the performance of any official act. This authority to require prepayment shall include fees governed by Section 6103.5.

(2) This subdivision does not apply to the service of process or notices in any action by the district attorney's office for the establishment or enforcement of a child support obligation.

(3) This subdivision does not apply to a particular jurisdiction unless the sheriff or marshal, as the case may be, imposes the requirement of

prepayment upon public agencies and upon all persons or entities within the private sector.

(4) The requirement for prepayment of a fee deposit does not apply to the orders or injunctions described in paragraph (1) of subdivision (q) of Section 527.6 of the Code of Civil Procedure. However, a sheriff, marshal, or constable may submit a billing to the superior court for payment of fees in the manner prescribed by the Judicial Council. The fees for service, cancellation of service, and making a not found return may not exceed the amounts provided in Sections 26721, 26736, and 26738, respectively, and are subject to the provisions of Section 26731.

(c) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

SEC. 5. Section 68085 of the Government Code is amended to read:

68085. (a) (1) There is hereby established the Trial Court Trust Fund, the proceeds of which shall be apportioned at least quarterly for the purpose of funding trial court operations, as defined in Section 77003. Apportionment payments may not exceed 30 percent of the total annual apportionment to the Trial Court Trust Fund for state trial court funding in any 90-day period.

(2) The apportionment payments shall be made by the Controller. The final payment from the Trial Court Trust Fund for each fiscal year shall be made on or before August 31 of the subsequent fiscal year.

(3) If apportionment payments are made on a quarterly basis, the payments shall be on July 15, October 15, January 15, and April 15. In addition to quarterly payments, a final payment from the Trial Court Trust Fund for each fiscal year may be made on or before August 31 of the subsequent fiscal year.

(4) Notwithstanding any other provision of law, in order to promote statewide efficiency, the Judicial Council may authorize the direct payment or reimbursement or both of actual costs from the Trial Court Trust Fund or the Trial Court Improvement Fund to fund administrative infrastructure within the Administrative Office of the Courts, such as legal services, financial services, information systems services, human resource services, and support services, for one or more participating courts upon appropriation of funding for these purposes in the annual Budget Act. The amount of appropriations from the Trial Court Improvement Fund under this subdivision may not exceed 20 percent of the amount deposited in the Trial Court Improvement Fund pursuant to subdivision (a) of Section 77205. Upon prior written approval of the Director of Finance, the Judicial Council may also authorize an increase in any reimbursements or direct payments in excess of the amount appropriated in the annual Budget Act. For any increases in reimbursements or direct payments within the fiscal year that exceed two

hundred thousand dollars ($200,000), the Director of Finance shall provide notification in writing of any approval granted under this section, not less than 30 days prior to the effective date of that approval, to the chairperson of the committee in each house of the Legislature that considers appropriations, the chairpersons of the committees and the appropriate subcommittees in each house of the Legislature that consider the annual Budget Act, and the Chairperson of the Joint Legislative Budget Committee, or not sooner than whatever lesser time the Chairperson of the Joint Legislative Budget Committee, or his or her designee, may in each instance, determine. The direct payment or reimbursement of costs from the Trial Court Trust Fund may be supported by the reduction of a participating court's allocation from the Trial Court Trust Fund to the extent that the court's expenditures for the program are reduced and the court is supported by the program. The Judicial Council shall provide the affected trial courts with quarterly reports on expenditures from the Trial Court Trust Fund incurred as authorized by this subdivision. The Judicial Council shall establish procedures to provide for the administration of this paragraph in a way that promotes the effective, efficient, reliable, and accountable operation of the trial courts.

(b) Notwithstanding any other provision of law, the fees listed in subdivision (c) shall all be deposited upon collection in a special account in the county treasury, and transmitted monthly to the Controller for deposit in the Trial Court Trust Fund.

(c) (1) Except as specified in subdivision (d), this section applies to all fees collected pursuant to Sections 631.3, 116.230, and 403.060 of the Code of Civil Procedure and Sections 26820.4, 26823, 26826, 26826.01, 26827, 26827.4, 26830, 26832.1, 26833.1, 26835.1, 26836.1, 26837.1, 26838, 26850.1, 26851.1, 26852.1, 26853.1, 26855.4, 26862, 27081.5, 68086, 72055, 72056, 72056.01, and 72060.

(2) If any of the fees provided for in this subdivision are partially waived by court order, and the fee is to be divided between the Trial Court Trust Fund and any other fund, the amount of the partial waiver shall be deducted from the amount to be distributed to each fund in the same proportion as the amount of each distribution bears to the total amount of the fee.

(3) Any amounts transmitted by a county to the Controller for deposit into the Trial Court Trust Fund from fees collected pursuant to Section 27361 between January 1, 1998, and the effective date of this paragraph shall be credited against the total amount the county is required to pay to the state pursuant to paragraph (2) of subdivision (b) of Section 77201 for the 1997–98 fiscal year.

(d) This section does not apply to that portion of a filing fee collected pursuant to Section 26820.4, 26826, 26827, 72055, or 72056 which is

allocated for dispute resolution pursuant to Section 470.3 of the Business and Professions Code, the county law library pursuant to Section 6320 of the Business and Professions Code, the Judges' Retirement Fund pursuant to Section 26822.3, automated recordkeeping or conversion to micrographics pursuant to Sections 26863 and 68090.7, and courthouse financing pursuant to Section 76238. This section also does not apply to fees collected pursuant to subdivisions (a) and (c) of Section 27361.

(e) This section applies to all payments required to be made to the State Treasury by any county or city and county pursuant to Section 77201, 77201.1, or 77205.

(f) Notwithstanding any other provision of law, no agency may take action to change the amounts allocated to any of the funds described in subdivision (a), (b), (c), or (d).

(g) Before making any apportionments under this section, the Controller shall deduct, from the annual appropriation for that purpose, the actual administrative costs that will be incurred under this section. Costs reimbursed under this section shall be determined on an annual basis in consultation with the Judicial Council.

(h) Any amounts required to be transmitted by a county or city and county to the state pursuant to this section shall be remitted to the Controller no later than 45 days after the end of the month in which the fees were collected. This remittance shall be accompanied by a remittance advice identifying the collection month and the appropriate account in the Trial Court Trust Fund to which it is to be deposited. Any remittance that is not made by the county or city and county in accordance with this section shall be considered delinquent, and subject to the penalties specified in this section.

(i) Upon receipt of any delinquent payment required pursuant to this section, the Controller shall calculate a penalty on any delinquent payment by multiplying the amount of the delinquent payment at a daily rate equivalent to $1^1/_2$ percent per month for the number of days the payment is delinquent. Notwithstanding Section 77009, any penalty on a delinquent payment that a court is required to reimburse to a county's general fund pursuant to this section and Section 24353 shall be paid from the Trial Court Operations Fund for that court.

(j) Penalty amounts calculated pursuant to subdivision (i) shall be paid by the county to the Trial Court Trust Fund no later than 45 days after the end of the month in which the penalty was calculated.

(k) The Trial Court Trust Fund shall be invested in the Surplus Money Investment Fund and all interest earned shall be allocated to the Trial Court Trust Fund semiannually and shall be allocated among the courts in accordance with the requirements of subdivision (a). The specific allocations shall be specified by the Judicial Council.

(*l*) It is the intent of the Legislature that the revenues required to be deposited into the Trial Court Trust Fund be remitted as soon after collection by the courts as possible.

SEC. 6. 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) Extend the duration of any temporary restraining order that would otherwise expire because an emergency condition, as described in this section, prevented the court from conducting proceedings to determine whether a permanent order should be entered. The extension shall be for the fewest days necessary under the circumstances of the emergency, as determined by the Chair of the Judicial Council.

(f) 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.

(g) 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.

(h) 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.

(i) 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.

(j) 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. 7. Section 68502.7 of the Government Code is amended to read:

68502.7. Nothing in this chapter shall be construed to require the state in any fiscal year to provide money for trial court costs from any state fund that is in excess of the total amount available for disbursement from that fund during the fiscal year. The Judicial Council may reallocate moneys pursuant to Section 68502.5 if at any time during the fiscal year

it determines that the amount available for disbursement from any state fund will be less than or greater than the amount already allocated from that fund for that fiscal year.

SEC. 8. Section 68926 of the Government Code is amended to read:

68926. The fee for filing a notice of appeal in a civil case appealed to a court of appeal is four hundred eighty-five dollars ($485). The fee for filing a petition for a writ within the original civil jurisdiction of the Supreme Court is four hundred twenty dollars ($420). The fee for filing a petition for a writ within the original civil jurisdiction of a court of appeal is four hundred eighty-five dollars ($485). These fees are in full, for all services, through the rendering of the judgment or the issuing of the remittitur or peremptory writ, except the fees imposed by subdivision (b) of Section 68926.1 and Section 68927. The Judicial Council may make rules governing the time and method of payment of these fees, and providing for excuse therefrom in appropriate cases. A fee may not be charged in appeals from, nor petitions for writs involving, juvenile cases or proceedings to declare a minor free from parental custody or control, or proceedings under the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code).

SEC. 9. Section 68927 of the Government Code is amended to read:

68927. The fee for filing a petition for review in a civil case in the Supreme Court after decision in a court of appeal is four hundred twenty dollars ($420). A fee may not be charged for petitions for review from decisions in juvenile cases or proceedings to declare a minor free from parental custody or control or proceedings under the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code).

SEC. 10. Section 71622 of the Government Code is amended to read:

71622. (a) Each trial court may establish and may appoint any subordinate judicial officers that are deemed necessary for the performance of subordinate judicial duties, as authorized by law to be performed by subordinate judicial officers. However, the number and type of subordinate judicial officers in a trial court shall be subject to approval by the Judicial Council. Subordinate judicial officers shall serve at the pleasure of the trial court.

(b) The appointment or termination of a subordinate judicial officer shall be made by order of the presiding judge or another judge or a committee to whom appointment or termination authority is delegated by the court, entered in the minutes of the court.

(c) The Judicial Council shall promulgate rules establishing the minimum qualifications and training requirements for subordinate judicial officers.

(d) The presiding judge of a superior court may cross-assign one type of subordinate judicial officer to exercise all the powers and perform all the duties authorized by law to be performed by another type of subordinate judicial officer, but only if the person cross-assigned satisfies the minimum qualifications and training requirements for the new assignment established by the Judicial Council pursuant to subdivision (c).

(e) The superior courts of two or more counties may appoint the same person as court commissioner.

(f) As of the implementation date of this chapter, all persons who were authorized to serve as subordinate judicial officers pursuant to other provisions of law shall be authorized by this section to serve as subordinate judicial officers at their existing salary rate, which may be a percentage of the salary of a judicial officer.

(g) A subordinate judicial officer who has been duly appointed and has thereafter been retired from service may be assigned by a presiding judge to perform subordinate judicial duties consistent with subdivision (a). The retired subordinate judicial officer shall be subject to the limits, if any, on postretirement service prescribed by the Public Employees' Retirement System, the county defined-benefit retirement system, as defined in subdivision (f) of Section 71624, or any other defined-benefit retirement plan from which the retired officer is receiving benefits. The retired subordinate judicial officer shall be compensated by the assigning court at a rate not to exceed 85 percent of the compensation of a retired judge assigned to a superior court.

SEC. 11. Section 72190 of the Government Code is amended to read:

72190. Within the jurisdiction of the court and under the direction of the judges, commissioners shall exercise all the powers and perform all of the duties prescribed by law. At the direction of the judges, commissioners may have the same jurisdiction and exercise the same powers and duties as the judges of the court with respect to any infraction or small claims action. They shall be ex officio deputy clerks.

SEC. 12. Section 72407 of the Government Code is repealed.

SEC. 13. Section 77006.5 of the Government Code is amended to read:

77006.5. As used in this chapter, ''trial court funding'' means the amount of state funds provided for the operation of the trial courts, as defined in Section 77003, appropriated in the Budget Act, and allocated or reallocated by the Judicial Council.

SEC. 14. Section 366.21 of the Welfare and Institutions Code is amended to read:

366.21. (a) Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the

appearance calendar. The court shall advise all persons present at the hearing of the date of the future hearing and of their right to be present and represented by counsel.

(b) Except as provided in Sections 294 and 295, notice of the hearing shall be provided pursuant to Section 293.

(c) At least 10 calendar days prior to the hearing, the social worker shall file a supplemental report with the court regarding the services provided or offered to the parent or legal guardian to enable him or her to assume custody and the efforts made to achieve legal permanence for the child if efforts to reunify fail, including, but not limited to, efforts to maintain relationships between the child and individuals who are important to the child, the progress made, and, where relevant, the prognosis for return of the child to the physical custody of his or her parent or legal guardian, and shall make his or her recommendation for disposition. If the child is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5, the report and recommendation may also take into account those factors described in subdivision (e) relating to the child's sibling group. If the recommendation is not to return the child to a parent or legal guardian, the report shall specify why the return of the child would be detrimental to the child. The social worker shall provide the parent or legal guardian, counsel for the child, and any court-appointed child advocate with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing. In the case of a child removed from the physical custody of his or her parent or legal guardian, the social worker shall, at least 10 calendar days prior to the hearing, provide a summary of his or her recommendation for disposition to any foster parents, relative caregivers, and certified foster parents who have been approved for adoption by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, community care facility, or foster family agency having the physical custody of the child.

(d) Prior to any hearing involving a child in the physical custody of a community care facility or a foster family agency that may result in the return of the child to the physical custody of his or her parent or legal guardian, or in adoption or the creation of a legal guardianship, the facility or agency shall file with the court a report containing its recommendation for disposition. Prior to the hearing involving a child in the physical custody of a foster parent, a relative caregiver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, the foster parent, relative caregiver, or the certified foster parent who has been approved for adoption by the

State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, may file with the court a report containing his or her recommendation for disposition. The court shall consider the report and recommendation filed pursuant to this subdivision prior to determining any disposition.

(e) At the review hearing held six months after the initial dispositional hearing, the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; and shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided.

Whether or not the child is returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental or would not be detrimental. The court also shall make appropriate findings pursuant to subdivision (a) of Section 366; and, where relevant, shall order any additional services reasonably believed to facilitate the return of the child to the custody of his or her parent or legal guardian. The court shall also inform the parent or legal guardian that if the child cannot be returned home by the 12-month permanency hearing, a proceeding pursuant to Section 366.26 may be instituted. This section does not apply in a case where, pursuant to Section 361.5, the court has ordered that reunification services shall not be provided.

If the child was under the age of three years on the date of the initial removal, or is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5, and the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the child, who was under the age of three years on the date of initial removal or is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5, may be returned to his or her parent or legal

guardian within six months or that reasonable services have not been provided, the court shall continue the case to the 12-month permanency hearing.

For the purpose of placing and maintaining a sibling group together in a permanent home, the court, in making its determination to schedule a hearing pursuant to Section 366.26 for some or all members of a sibling group, as described in paragraph (3) of subdivision (a) of Section 361.5, shall review and consider the social worker's report and recommendations. Factors the report shall address, and the court shall consider, may include, but need not be limited to, whether the sibling group was removed from parental care as a group, the closeness and strength of the sibling bond, the ages of the siblings, the appropriateness of maintaining the sibling group together, the detriment to the child if sibling ties are not maintained, the likelihood of finding a permanent home for the sibling group, whether the sibling group is currently placed together in a preadoptive home or has a concurrent plan goal of legal permanency in the same home, the wishes of each child whose age and physical and emotional condition permits a meaningful response, and the best interest of each child in the sibling group. The court shall specify the factual basis for its finding that it is in the best interest of each child to schedule a hearing pursuant to Section 366.26 in 120 days for some or all of the members of the sibling group.

If the child was removed initially under subdivision (g) of Section 300 and the court finds by clear and convincing evidence that the whereabouts of the parent are still unknown, or the parent has failed to contact and visit the child, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If the court finds by clear and convincing evidence that the parent has been convicted of a felony indicating parental unfitness, the court may schedule a hearing pursuant to Section 366.26 within 120 days.

If the child had been placed under court supervision with a previously noncustodial parent pursuant to Section 361.2, the court shall determine whether supervision is still necessary. The court may terminate supervision and transfer permanent custody to that parent, as provided for by paragraph (1) of subdivision (b) of Section 361.2.

In all other cases, the court shall direct that any reunification services previously ordered shall continue to be offered to the parent or legal guardian pursuant to the time periods set forth in subdivision (a) of Section 361.5, provided that the court may modify the terms and conditions of those services.

If the child is not returned to his or her parent or legal guardian, the court shall determine whether reasonable services that were designed to aid the parent or legal guardian in overcoming the problems that led to the initial removal and the continued custody of the child have been

provided or offered to the parent or legal guardian. The court shall order that those services be initiated, continued, or terminated.

(f) The permanency hearing shall be held no later than 12 months after the date the child entered foster care, as that date is determined pursuant to subdivision (a) of Section 361.5. At the permanency hearing, the court shall determine the permanent plan for the child, which shall include a determination of whether the child will be returned to the child's home and, if so, when, within the time limits of subdivision (a) of Section 361.5. The court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The court shall also determine whether reasonable services that were designed to aid the parent or legal guardian to overcome the problems that led to the initial removal and continued custody of the child have been provided or offered to the parent or legal guardian. For each youth 16 years of age and older, the court shall also determine whether services have been made available to assist him or her in making the transition from foster care to independent living. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5, shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided, and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Whether or not the child is returned to his or her parent or legal guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental. The court also shall make a finding pursuant to subdivision (a) of Section 366.

(g) If the time period in which the court-ordered services were provided has met or exceeded the time period set forth in paragraph (1), (2), or (3) of subdivision (a) of Section 361.5, as appropriate, and a child is not returned to the custody of a parent or legal guardian at the permanency hearing held pursuant to subdivision (f), the court shall do one of the following:

(1) Continue the case for up to six months for a permanency review hearing, provided that the hearing shall occur within 18 months of the

date the child was originally taken from the physical custody of his or her parent or legal guardian. The court shall continue the case only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or legal guardian. For the purposes of this section, in order to find a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time, the court shall be required to find all of the following:

(A) That the parent or legal guardian has consistently and regularly contacted and visited with the child.

(B) That the parent or legal guardian has made significant progress in resolving problems that led to the child's removal from the home.

(C) The parent or legal guardian has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs.

For purposes of this subdivision, the court's decision to continue the case based on a finding or substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interests of the child.

The court shall inform the parent or legal guardian that if the child cannot be returned home by the next permanency review hearing, a proceeding pursuant to Section 366.26 may be instituted. The court may not order that a hearing pursuant to Section 366.26 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent or legal guardian.

(2) Order that a hearing be held within 120 days, pursuant to Section 366.26, but only if the court does not continue the case to the permanency planning review hearing and there is clear and convincing evidence that reasonable services have been provided or offered to the parents or legal guardians.

(3) Order that the child remain in long-term foster care, but only if the court finds by clear and convincing evidence, based upon the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship. For

purposes of this section, a recommendation by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency that adoption is not in the best interest of the child shall constitute a compelling reason for the court's determination. That recommendation shall be based on the present circumstances of the child and may not preclude a different recommendation at a later date if the child's circumstances change.

If the court orders that a child who is 10 years of age or older remain in long-term foster care at a group home, the court shall determine whether the agency has made reasonable efforts to maintain the child's relationships with individuals other than the child's siblings who are important to the child, consistent with the child's best interests, and may make any appropriate order to ensure that those relationships are maintained.

(h) In any case in which the court orders that a hearing pursuant to Section 366.26 shall be held, it shall also order the termination of reunification services to the parent or legal guardian. The court shall continue to permit the parent or legal guardian to visit the child pending the hearing unless it finds that visitation would be detrimental to the child. The court shall make any other appropriate orders to enable the child to maintain relationships with other individuals who are important to the child.

(i) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that shall include:

(1) Current search efforts for an absent parent or parents or legal guardians.

(2) A review of the amount of and nature of any contact between the child and his or her parents or legal guardians and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, ''extended family'' for the purpose of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial

rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3.

(5) The relationship of the child to any identified prospective adoptive parent or legal guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the child concerning placement and the adoption or guardianship, unless the child's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(6) A description of efforts to be made to identify a prospective adoptive parent or legal guardian, including, but not limited to, child specific recruitment and listing on an adoption exchange.

(7) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(j) If, at any hearing held pursuant to Section 366.26, a guardianship is established for the minor with a relative, and juvenile court dependency is subsequently dismissed, the relative shall be eligible for aid under the Kin-GAP program as provided in Article 4.5 (commencing with Section 11360) of Chapter 2 of Part 3 of Division 9.

(k) As used in this section, ''relative'' means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words ''great,'' ''great-great,'' or ''grand,'' or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

(*l*) For purposes of this section, evidence of any of the following circumstances may not, in and of itself, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to make and finalize a permanent placement for the child if efforts to reunify fail.

(3) Services to make and finalize a permanent placement for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

SEC. 14.5. Section 366.21 of the Welfare and Institutions Code is amended to read:

366.21. (a) Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the appearance calendar. The court shall advise all persons present at the

hearing of the date of the future hearing and of their right to be present and represented by counsel.

(b) Except as provided in Sections 294 and 295, notice of the hearing shall be provided pursuant to Section 293.

(c) At least 10 calendar days prior to the hearing, the social worker shall file a supplemental report with the court regarding the services provided or offered to the parent or legal guardian to enable him or her to assume custody and the efforts made to achieve legal permanence for the child if efforts to reunify fail, including, but not limited to, efforts to maintain relationships between a child who is 10 years of age or older and has been in out-of-home placement in a group home for six months or longer from the date the child entered foster care and individuals who are important to the child, consistent with the child's best interests; the progress made; and, where relevant, the prognosis for return of the child to the physical custody of his or her parent or legal guardian; and shall make his or her recommendation for disposition. If the child is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5, the report and recommendation may also take into account those factors described in subdivision (e) relating to the child's sibling group. If the recommendation is not to return the child to a parent or legal guardian, the report shall specify why the return of the child would be detrimental to the child. The social worker shall provide the parent or legal guardian, counsel for the child, and any court-appointed child advocate with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing. In the case of a child removed from the physical custody of his or her parent or legal guardian, the social worker shall, at least 10 calendar days prior to the hearing, provide a summary of his or her recommendation for disposition to any foster parents, relative caregivers, and certified foster parents who have been approved for adoption by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, community care facility, or foster family agency having the physical custody of the child.

(d) Prior to any hearing involving a child in the physical custody of a community care facility or a foster family agency that may result in the return of the child to the physical custody of his or her parent or legal guardian, or in adoption or the creation of a legal guardianship, the facility or agency shall file with the court a report containing its recommendation for disposition. Prior to the hearing involving a child in the physical custody of a foster parent, a relative caregiver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, the foster parent, relative caregiver, or

the certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, may file with the court a report containing his or her recommendation for disposition. The court shall consider the report and recommendation filed pursuant to this subdivision prior to determining any disposition.

(e) At the review hearing held six months after the initial dispositional hearing, the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; and shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself to services provided.

Whether or not the child is returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental or would not be detrimental. The court also shall make appropriate findings pursuant to subdivision (a) of Section 366; and, where relevant, shall order any additional services reasonably believed to facilitate the return of the child to the custody of his or her parent or legal guardian. The court shall also inform the parent or legal guardian that if the child cannot be returned home by the 12-month permanency hearing, a proceeding pursuant to Section 366.26 may be instituted. This section does not apply in a case where, pursuant to Section 361.5, the court has ordered that reunification services shall not be provided.

If the child was under the age of three years on the date of the initial removal, or is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5, and the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the child, who was under the age of three years on the date of initial removal or is a member of a sibling group described in paragraph (3) of subdivision

(a) of Section 361.5, may be returned to his or her parent or legal guardian within six months or that reasonable services have not been provided, the court shall continue the case to the 12-month permanency hearing.

For the purpose of placing and maintaining a sibling group together in a permanent home, the court, in making its determination to schedule a hearing pursuant to Section 366.26 for some or all members of a sibling group, as described in paragraph (3) of subdivision (a) of Section 361.5, shall review and consider the social worker's report and recommendations. Factors the report shall address, and the court shall consider, may include, but need not be limited to, whether the sibling group was removed from parental care as a group, the closeness and strength of the sibling bond, the ages of the siblings, the appropriateness of maintaining the sibling group together, the detriment to the child if sibling ties are not maintained, the likelihood of finding a permanent home for the sibling group, whether the sibling group is currently placed together in a preadoptive home or has a concurrent plan goal of legal permanency in the same home, the wishes of each child whose age and physical and emotional condition permits a meaningful response, and the best interest of each child in the sibling group. The court shall specify the factual basis for its finding that it is in the best interest of each child to schedule a hearing pursuant to Section 366.26 in 120 days for some or all of the members of the sibling group.

If the child was removed initially under subdivision (g) of Section 300 and the court finds by clear and convincing evidence that the whereabouts of the parent are still unknown, or the parent has failed to contact and visit the child, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If the court finds by clear and convincing evidence that the parent has been convicted of a felony indicating parental unfitness, the court may schedule a hearing pursuant to Section 366.26 within 120 days.

If the child had been placed under court supervision with a previously noncustodial parent pursuant to Section 361.2, the court shall determine whether supervision is still necessary. The court may terminate supervision and transfer permanent custody to that parent, as provided for by paragraph (1) of subdivision (b) of Section 361.2.

In all other cases, the court shall direct that any reunification services previously ordered shall continue to be offered to the parent or legal guardian pursuant to the time periods set forth in subdivision (a) of Section 361.5, provided that the court may modify the terms and conditions of those services.

If the child is not returned to his or her parent or legal guardian, the court shall determine whether reasonable services that were designed to aid the parent or legal guardian in overcoming the problems that led to

the initial removal and the continued custody of the child have been provided or offered to the parent or legal guardian. The court shall order that those services be initiated, continued, or terminated.

(f) The permanency hearing shall be held no later than 12 months after the date the child entered foster care, as that date is determined pursuant to subdivision (a) of Section 361.5. At the permanency hearing, the court shall determine the permanent plan for the child, which shall include a determination of whether the child will be returned to the child's home and, if so, when, within the time limits of subdivision (a) of Section 361.5. The court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The court shall also determine whether reasonable services that were designed to aid the parent or legal guardian to overcome the problems that led to the initial removal and continued custody of the child have been provided or offered to the parent or legal guardian. For each youth 16 years of age and older, the court shall also determine whether services have been made available to assist him or her in making the transition from foster care to independent living. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5, shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided, and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Whether or not the child is returned to his or her parent or legal guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental. The court also shall make a finding pursuant to subdivision (a) of Section 366.

(g) If the time period in which the court-ordered services were provided has met or exceeded the time period set forth in paragraph (1), (2), or (3) of subdivision (a) of Section 361.5, as appropriate, and a child is not returned to the custody of a parent or legal guardian at the permanency hearing held pursuant to subdivision (f), the court shall do one of the following:

(1) Continue the case for up to six months for a permanency review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or legal guardian. The court shall continue the case only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or legal guardian. For the purposes of this section, in order to find a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time, the court shall be required to find all of the following:

(A) That the parent or legal guardian has consistently and regularly contacted and visited with the child.

(B) That the parent or legal guardian has made significant progress in resolving problems that led to the child's removal from the home.

(C) The parent or legal guardian has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs.

For purposes of this subdivision, the court's decision to continue the case based on a finding or substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interests of the child.

The court shall inform the parent or legal guardian that if the child cannot be returned home by the next permanency review hearing, a proceeding pursuant to Section 366.26 may be instituted. The court may not order that a hearing pursuant to Section 366.26 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent or legal guardian.

(2) Order that a hearing be held within 120 days, pursuant to Section 366.26, but only if the court does not continue the case to the permanency planning review hearing and there is clear and convincing evidence that reasonable services have been provided or offered to the parents or legal guardians.

(3) Order that the child remain in long-term foster care, but only if the court finds by clear and convincing evidence, based upon the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the

best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship. For purposes of this section, a recommendation by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency that adoption is not in the best interest of the child shall constitute a compelling reason for the court's determination. That recommendation shall be based on the present circumstances of the child and may not preclude a different recommendation at a later date if the child's circumstances change.

If the court orders that a child who is 10 years of age or older remain in long-term foster care at a group home, the court shall determine whether the agency has made reasonable efforts to maintain the child's relationships with individuals other than the child's siblings who are important to the child, consistent with the child's best interests, and may make any appropriate order to ensure that those relationships are maintained.

(h) In any case in which the court orders that a hearing pursuant to Section 366.26 shall be held, it shall also order the termination of reunification services to the parent or legal guardian. The court shall continue to permit the parent or legal guardian to visit the child pending the hearing unless it finds that visitation would be detrimental to the child. The court shall make any other appropriate orders to enable the child to maintain relationships with individuals, other than the child's siblings, who are important to the child, consistent with the child's best interests.

(i) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that shall include:

(1) Current search efforts for an absent parent or parents or legal guardians.

(2) A review of the amount of and nature of any contact between the child and his or her parents or legal guardians and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, ''extended family'' for the purpose of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, particularly

the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3.

(5) The relationship of the child to any identified prospective adoptive parent or legal guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the child concerning placement and the adoption or guardianship, unless the child's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(6) A description of efforts to be made to identify a prospective adoptive parent or legal guardian, including, but not limited to, child specific recruitment and listing on an adoption exchange.

(7) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(j) If, at any hearing held pursuant to Section 366.26, a guardianship is established for the minor with a relative, and juvenile court dependency is subsequently dismissed, the relative shall be eligible for aid under the Kin-GAP program as provided in Article 4.5 (commencing with Section 11360) of Chapter 2 of Part 3 of Division 9.

(k) As used in this section, ''relative'' means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words ''great,'' ''great-great,'' or ''grand,'' or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

(*l*) For purposes of this section, evidence of any of the following circumstances may not, in and of itself, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to make and finalize a permanent placement for the child if efforts to reunify fail.

(3) Services to make and finalize a permanent placement for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

SEC. 15. Section 16010.6 of the Welfare and Institutions Code is amended to read:

16010.6. (a) As soon as possible after a placing agency makes a decision with respect to a placement or a change in placement of a dependent child, the placing agency shall notify the child's attorney and provide to the child's attorney information regarding the child's address, telephone number, and caregiver. This requirement is declaratory of existing law.

(b) The Judicial Council shall adopt a rule of court directing the attorney for a child for whom a dependency petition has been filed, upon receipt from the agency responsible for placing the child of the name, address, and telephone number of the child's caregiver, to timely provide the attorney's contact information to the caregiver and, if the child is 10 years of age or older, to the child. This rule does not preclude an attorney from giving contact information to a child who is younger than 10 years of age.

SEC. 16. Section 1.5 of this bill incorporates amendments to Section 3110.5 of the Family Code proposed by both this bill and AB 3081. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2005, but this bill becomes operative first, (2) each bill amends Section 3110.5 of the Family Code, and (3) this bill is enacted after AB 3081, in which case Section 3110.5 of the Family Code, as amended by Section 1 of this bill, shall remain operative only until the operative date of AB 3081, at which time Section 1.5 of this bill shall become operative.

SEC. 17. Section 14.5 of this bill incorporates amendments to Section 366.21 of the Welfare and Institutions Code proposed by both this bill and AB 2807. 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 366.21 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 2807, in which case Section 14 of this bill shall not become operative.

SEC. 18. 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 812

An act to amend Section 22962 of the Business and Professions Code, relating to tobacco products.

[Approved by Governor September 27, 2004. Filed with Secretary of State September 27, 2004.]

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

SECTION 1. Section 22962 of the Business and Professions Code is amended to read:

22962. (a) For purposes of this section, the following terms have the following meanings:

(1) ''Self-service display'' means the open display of tobacco products or tobacco paraphernalia in a manner that is accessible to the general public without the assistance of the retailer or employee of the retailer.

(2) ''Tobacco paraphernalia'' means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, or other instruments or things designed for the smoking or ingestion of tobacco products.

(3) ''Tobacco product'' means any product containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco.

(4) ''Tobacco store'' means a retail business that meets all of the following requirements:

(A) Primarily sells tobacco products.

(B) Generates more than 60 percent of its gross revenues annually from the sale of tobacco products and tobacco paraphernalia.

(C) Does not permit any person under 18 years of age to be present or enter the premises at any time, unless accompanied by the person's parent or legal guardian, as defined in Section 6903 of the Family Code.

(D) Does not sell alcoholic beverages or food for consumption on the premises.

(b) Except as permitted in subdivision (b) of Section 22960, it is unlawful for a person engaged in the retail sale of tobacco products to sell, offer for sale, or display for sale any tobacco product or tobacco paraphernalia by self-service display. A person who violates this section is subject to those civil penalties specified in the schedule in subdivision (a) of Section 22958.

(c) Subdivision (b) shall not apply to the display in a tobacco store of cigars, pipe tobacco, snuff, chewing tobacco, or dipping tobacco, provided that in the case of cigars they are generally not sold or offered

for sale in a sealed package of the manufacturer or importer containing less than six cigars. In any enforcement action brought pursuant to this division, the retail business that displays any of the items described in this subdivision in a self-service display shall have the burden of proving that it qualifies for the exemption established in this subdivision.

(d) The Attorney General, a city attorney, a county counsel, or a district attorney may bring a civil action to enforce this section.

(e) This section does not preempt or otherwise prohibit the adoption of a local standard that imposes greater restrictions on the access to tobacco products than the restrictions imposed by this section. To the extent that there is an inconsistency between this section and a local standard that imposes greater restrictions on the access to tobacco products, the greater restriction on the access to tobacco products in the local standard shall prevail.

CHAPTER 813

An act to amend Sections 19102, 19103, and 19201 of, and to add Sections 18564.5, 19214, 19214.5, and 19215 to, the Elections Code, relating to elections.

[Approved by Governor September 27, 2004. Filed with Secretary of State September 27, 2004.]

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

SECTION 1. This act shall be known as the ''Voting System Security Act of 2004.''

SEC. 2. The Legislature finds and declares that the integrity of California's voting systems is of paramount concern to all state voters. Any action that undermines that integrity must be addressed in the most expeditious manner available to state authorities. The Secretary of State, elections officials, and legal authorities shall be empowered to thwart any effort that casts or could cast doubt on the validity of the elections process and each voter's right to have his or her vote counted.

SEC. 3. Section 18564.5 is added to the Elections Code, to read:

18564.5. (a) The Secretary of State, Attorney General, and any local elections official in the county in which the act occurs, may bring a civil action against an individual, business, or other legal entity that commits any of the following acts before, during, or after an election:

(1) Tampers, interferes, or attempts to interfere with the correct operation of, or willfully damages in order to prevent the use of, any

voting machine, voting device, voting system, vote tabulating device, or ballot tally software.

(2) Interferes or attempts to interfere with the secrecy of voting or interferes or attempts to interfere with ballot tally software program source codes.

(3) Knowingly, and without authorization, gains access to or provides another person or persons with access to a voting machine for the purpose of committing one of the acts specified by this section.

(4) Willfully substitutes or attempts to substitute forged, counterfeit, or malicious ballot tally software program source codes.

(5) Knowingly, and without authorization, inserts or causes the insertion of uncertified hardware, software, or firmware, for whatever purpose, into any voting machine, voting device, voting system, vote tabulating device, or ballot tally software.

(6) Fails to notify the Secretary of State prior to any change in hardware, software, or firmware to a voting machine, voting device, voting system, or vote tabulating device, certified or conditionally certified for use in this state.

(b) A civil action may be brought pursuant to this section for a civil penalty not to exceed fifty thousand dollars ($50,000) for each act and for injunctive relief, if appropriate.

SEC. 4. Section 19102 of the Elections Code is amended to read:

19102. The Secretary of State may investigate any alleged violation of this code or the Secretary of State's regulations with the power to subpoena all necessary persons and records.

SEC. 5. Section 19103 of the Elections Code is amended to read:

19103. (a) An exact copy of the source code for all ballot tally software programs certified by the Secretary of State, including all changes or modifications and new or amended versions, shall be placed in an approved escrow facility prior to its use. No voting system may be used for an election unless an exact copy of the ballot tally software program source codes is placed in escrow.

(b) The Secretary of State shall adopt regulations relating to the following:

(1) The definition of source codes for ballot tally software.

(2) Specifications for the escrow facility, including security and environmental specifications necessary for the preservation of the ballot tally software program source codes.

(3) Procedures for submitting ballot tally software program source codes.

(4) Criteria for access to ballot tally software program source codes.

(c) The Secretary of State shall have reasonable access to the materials placed in escrow, under the following circumstances:

(1) In the course of an investigation or prosecution regarding vote counting equipment or procedures.

(2) Upon a finding by the Secretary of State that an escrow facility or escrow company is unable or unwilling to maintain materials in escrow in compliance with this section.

(3) In order to fulfill the provisions of this chapter related to the approval of voting systems.

(4) In order to verify that the software on a voting system, voting machine, or vote tabulating device is identical to the approved version.

(5) For any other purpose deemed necessary to fulfill the provisions of this code or Section 12172.5 of the Government Code.

(d) The Secretary of State may seek injunctive relief requiring the elections officials, or any vendor or manufacturer of a voting machine, voting system, or vote tabulating device, to comply with this section and related regulations. Venue for a proceeding under this section shall be exclusively in Sacramento County.

(e) This section applies to all elections.

SEC. 6. Section 19201 of the Elections Code is amended to read:

19201. (a) No voting system, in whole or in part, shall be used unless it has received the approval of the Secretary of State prior to any election at which it is to be first used.

(b) No jurisdiction may purchase or contract for a voting system, in whole or in part, unless it has received the approval of the Secretary of State.

SEC. 7. Section 19214 is added to the Elections Code, to read:

19214. The Secretary of State may seek injunctive and administrative relief when a voting system has been compromised by the addition or deletion of hardware, software, or firmware without prior approval.

SEC. 8. Section 19214.5 is added to the Elections Code, to read:

19214.5. (a) The Secretary of State may seek all of the following relief for an unauthorized change in hardware, software, or firmware to any voting system certified or conditionally certified in California:

(1) Monetary damages from the offending party or parties, not to exceed ten thousand dollars ($10,000) per violation. For purposes of this subdivision, each voting machine found to contain the unauthorized hardware, software, or firmware shall be considered a separate violation. Damages imposed pursuant to this subdivision shall be apportioned 50 percent to the county in which the violation occurred, if applicable, and 50 percent to the Office of the Secretary of State for purposes of bolstering voting systems security efforts.

(2) Immediate commencement of decertification proceedings for the voting system in question.

(3) Prohibiting the manufacturer or vendor of a voting system from doing any elections-related business in the state for one, two, or three years.

(4) Refund of all moneys paid by a locality for a compromised voting system, whether or not the voting system has been used in an election.

(5) Any other remedial actions authorized by law to prevent unjust enrichment of the offending party.

(b) Prior to seeking any measure of relief under this section, the Secretary of State shall hold a public hearing. The Secretary of State shall give notice of the hearing in the manner prescribed by Section 6064 of the Government Code in a newspaper of general circulation published in Sacramento County. The Secretary of State also shall transmit written notice of the hearing, at least 30 days prior to the hearing, to each county elections official, the offending party or parties, any person that the Secretary of State believes will be interested in the hearing, and any person who requests, in writing, notice of the hearing.

(c) The decision of the Secretary of State, to seek any relief under this section, shall be in writing and state the findings of the secretary. The decision shall be open to public inspection.

SEC. 9. Section 19215 is added to the Elections Code, to read:

19215. (a) The Secretary of State may seek injunctive relief requiring an elections official, or any vendor or manufacturer of a voting machine, voting system, or vote tabulating device, to comply with the requirements of this code, the regulations of the Secretary of State, and the specifications for voting machines, voting devices, vote tabulating devices, and any software used for each, including the programs and procedures for vote tabulating and testing.

(b) Venue for a proceeding under this section shall be exclusively in Sacramento County.

SEC. 10. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 814

An act to add Article 4 (commencing with Section 19250) to Chapter 3 of Division 19 of the Elections Code, relating to elections.

[Approved by Governor September 27, 2004. Filed with
Secretary of State September 27, 2004.]

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

SECTION 1. Article 4 (commencing with Section 19250) is added to Chapter 3 of Division 19 of the Elections Code, to read:

Article 4. Direct Recording Electronic Voting Systems

19250. (a) On and after January 1, 2005, the Secretary of State may not approve a direct recording electronic voting system unless the system has received federal qualification and includes an accessible voter verified paper audit trail.

(b) On and after January 1, 2006, a city or county may not contract for or purchase a direct recording electronic voting system unless the system has received federal qualification and includes an accessible voter verified paper audit trail.

(c) As of January 1, 2006, all direct recording electronic voting systems in use on that date, regardless of when contracted for or purchased, shall have received federal qualification and include an accessible voter verified paper audit trail. If the direct recording electronic voting system does not already include an accessible voter verified paper audit trail, the system shall be replaced or modified to include an accessible voter verified paper audit trail.

19251. For purposes of this article, the following terms shall have the following meanings:

(a) ''Accessible'' means that the information provided on the paper record copy from the voter verified paper audit trail mechanism is provided or conveyed to voters via both a visual and a nonvisual method, such as through an audio component.

(b) ''Direct recording electronic voting system'' means a voting system that records a vote electronically and does not require or permit the voter to record his or her vote directly onto a tangible ballot.

(c) ''Voter verified paper audit trail'' means a component of a direct recording electronic voting system that prints a contemporaneous paper record copy of each electronic ballot and allows each voter to confirm his or her selections before the voter casts his or her ballot.

(d) ''Federal qualification'' means the system has been certified, if applicable, by means of qualification testing by a Nationally Recognized Test Laboratory and has met or exceeded the minimum requirements set forth in the Performance and Text Standards for Punch Card, Mark Sense, and Direct Recording Electronic Voting Systems, or in any successor voluntary standard document, developed and promulgated by

the Federal Election Commission, the Election Assistance Commission, or the National Institute of Standards and Technology.

(e) ''Paper record copy'' means an auditable document printed by a voter verified paper audit trail component that corresponds to the voter's electronic vote and lists the contests on the ballot and the voter's selections for those contests. A paper record copy is not a ballot.

19252. To the extent that they are available for expenditure for the purposes of this article, federal funds or moneys from the Voting Modernization Fund, created pursuant to subdivision (b) of Section 19234, shall be used. No moneys from the General Fund shall be expended for the purposes of this article.

SEC. 2. Pursuant to Section 17579 of the Government Code, the Legislature finds that there is no mandate contained in this act that will result in costs incurred by a local agency or school district for a new program or higher level of service which require reimbursement pursuant to Section 6 of Article XIII B of the California Constitution and Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

CHAPTER 815

An act to amend Section 85307 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 27, 2004. Filed with Secretary of State September 27, 2004.]

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

SECTION 1. Section 85307 of the Government Code is amended to read:

85307. (a) The provisions of this article regarding loans apply to extensions of credit, but do not apply to loans made to a candidate by a commercial lending institution in the lender's regular course of business on terms available to members of the general public for which the candidate is personally liable.

(b) Notwithstanding subdivision (a), a candidate for elective state office may not personally loan to his or her campaign, including the proceeds of a loan obtained by the candidate from a commercial lending institution, an amount, the outstanding balance of which exceeds one hundred thousand dollars ($100,000). A candidate may not charge interest on any loan he or she made to his or her campaign.

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. 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.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that the November 2, 2004, statewide general election is conducted in a fair and impartial manner, and to clarify the law regarding candidate loans to the candidate's committee in light of the ruling in Camp v. Schwarzenegger (Superior Court Sacramento County, 2004, No. 03AS05478), it is necessary that this bill go into immediate effect.

CHAPTER 816

An act to amend Section 84602 of the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor September 27, 2004. Filed with Secretary of State September 27, 2004.]

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

SECTION 1. Section 84602 of the Government Code is amended to read:

84602. To implement the Legislature's intent, the Secretary of State, in consultation with the commission, notwithstanding any other provision of the Government Code, shall do all of the following:

(a) Develop online and electronic filing processes for use by persons and entities specified in Sections 84604 and 84605 that are required to file statements and reports with the Secretary of State's office pursuant to Chapter 4 (commencing with Section 84100) and Chapter 6 (commencing with Section 86100). Those processes shall each enable

a user to comply with all the disclosure requirements of this title and shall include, at a minimum, the following:

(1) A means or method whereby filers subject to this chapter may submit required filings free of charge. Any means or method developed pursuant to this provision shall not provide any additional or enhanced functions or services that exceed the minimum requirements necessary to fulfill the disclosure provisions of this title. At least one means or method shall be made available no later than December 31, 2002.

(2) The definition of a nonproprietary standardized record format or formats using industry standards for the transmission of the data that is required of those persons and entities specified in subdivision (a) of Section 84604 and Section 84605 and that conforms with the disclosure requirements of this title. The Secretary of State shall hold public hearings prior to development of the record format or formats as a means to ensure that affected entities have an opportunity to provide input into the development process. The format or formats shall be made public no later than July 1, 1999, to ensure sufficient time to comply with the requirements of this chapter.

(b) Accept test files, from software vendors and others wishing to file reports electronically, for the purpose of determining whether the file format is in compliance with the standardized record format developed pursuant to subdivision (a) and is compatible with the Secretary of State's system for receiving the data. A list of software and service providers who have submitted acceptable test files shall be published by the Secretary of State and made available to the public. Acceptably formatted files shall be submitted by a filer in order to meet the requirements of this chapter.

(c) Develop a system that provides for the online or electronic transfer of the data specified in this section utilizing telecommunications technology that assures the integrity of the data transmitted and that creates safeguards against efforts to tamper with or subvert the data.

(d) Make all the data filed available on the Internet in an easily understood format that provides the greatest public access. The data shall be made available free of charge and as soon as possible after receipt. All late contribution and late independent expenditure reports, as defined by Sections 84203 and 84204, respectively, shall be made available on the Internet within 24 hours of receipt. The data made available on the Internet shall not contain the street name and building number of the persons or entity representatives listed on the electronically filed forms or any bank account number required to be disclosed pursuant to this title.

(e) Develop a procedure for filers to comply with the requirement that they sign under penalty of perjury pursuant to Section 81004.

(f) Maintain all filed data online for 10 years after the date it is filed, and then archive the information in a secure format.

(g) Provide assistance to those seeking public access to the information.

(h) Implement sufficient technology to seek to prevent unauthorized alteration or manipulation of the data.

(i) Provide the commission with necessary information to enable it to assist agencies, public officials, and others, with the compliance and with administration of this title.

(j) Report to the Legislature on the implementation and development of the online and electronic filing and disclosure requirements of this chapter. The report shall include an examination of system security, private security issues, software availability, compliance costs to filers, use of the filing system and software provided by the Secretary of State, and other issues relating to this chapter, and shall recommend appropriate changes if necessary. In preparing the report, the commission may present to the Secretary of State and the Legislature its comments regarding this chapter as it relates to the duties of the commission and suggest appropriate changes if necessary. There shall be one report due before the system is operational as set forth in Section 84603, one report due no later than June 1, 2002, and one report due no later than January 31, 2003.

(k) Review current filing and disclosure requirements of this chapter and report to the Legislature, no later than June 1, 2005, recommendations on revising requirements so as to promote greater reliance on electronic and online submissions.

SEC. 2. 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 817

An act to amend Sections 316, 340, 1000, 1001, 1201, 1202, 1500, 6180, and 6952 of the Elections Code, relating to primary elections.

[Approved by Governor September 27, 2004. Filed with Secretary of State September 27, 2004.]

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

SECTION 1. Section 316 of the Elections Code is amended to read:

316. ''Direct primary'' is the primary election held on the first Tuesday after the first Monday in June in each even-numbered year, to

nominate candidates to be voted for at the ensuing general election or to elect members of a party central committee.

SEC. 2. Section 340 of the Elections Code is amended to read:

340. ''Presidential primary'' is the primary election that is held on the first Tuesday after the first Monday in June in any year which is evenly divisible by the number four, and at which delegations to national party conventions are to be chosen.

SEC. 3. Section 1000 of the Elections Code is amended to read:

1000. The established election dates in each year are as follows:

(a) The second Tuesday of April in each even-numbered year.

(b) The first Tuesday after the first Monday in March of each odd-numbered year.

(c) The first Tuesday after the first Monday in June in each year.

(d) The first Tuesday after the first Monday in November of each year.

SEC. 4. Section 1001 of the Elections Code is amended to read:

1001. Elections held in June and November of each even-numbered year are statewide elections and these dates are statewide election dates.

SEC. 5. Section 1201 of the Elections Code is amended to read:

1201. (a) The statewide direct primary shall be held on the first Tuesday after the first Monday in June of each even-numbered year.

(b) Notwithstanding subdivision (a), in any year which is evenly divisible by the number four, the statewide direct primary shall be held on the first Tuesday after the first Monday in June and shall be consolidated with the presidential primary held in that year.

SEC. 6. Section 1202 of the Elections Code is amended to read:

1202. The presidential primary shall be held on the first Tuesday after the first Monday in June in any year evenly divisible by the number four.

SEC. 7. Section 1500 of the Elections Code is amended to read:

1500. The established mailed ballot election dates are as follows:

(a) The first Tuesday after the first Monday in May of each year.

(b) The first Tuesday after the first Monday in March of each even-numbered year.

(c) The last Tuesday in August of each year.

SEC. 8. Section 6180 of the Elections Code is amended to read:

6180. At least 68 days before a presidential primary election, the Secretary of State shall transmit to each county elections official a certified list containing the name of each candidate who is entitled to be voted for on the ballot at the presidential primary, and the name of each chairperson of a steering committee of an uncommitted delegation who is to be voted for on the same ballot.

If no uncommitted delegation has qualified pursuant to Article 4 (commencing with Section 6060), the Secretary of State shall inform the

county elections officials to provide for an uncommitted delegate space on the ballot.

The certified list shall be in substantially the following form:

Certified List of Presidential Candidates and Uncommitted Delegations

To the County Elections Official of ____ County:

I, ____, Secretary of State, do hereby certify that the following list contains the name of each person who is entitled to be voted for as a candidate of the Democratic Party at the presidential primary election to be held on the ____ day of June, 20__, and the name of each chairperson of a steering committee of an uncommitted delegation which is entitled to be voted for on the ballot.

List of Presidential Candidates and Uncommitted Delegations

Linda Adams
Joseph Black
John Reardon
Unpledged delegation
Paul Minor,
Chairperson

Dated at Sacramento, California, this ____ day of ____, 20__.

(SEAL) Secretary of State

SEC. 9. Section 6952 of the Elections Code is amended to read:

6952. The certified list required by Section 6951 shall be in substantially the following form:

CERTIFIED LIST OF CANDIDATES FOR PRESIDENTIAL PREFERENCE PRIMARY AND CANDIDATES FOR NATIONAL CONVENTION DELEGATE

To the County Elections Official of ____ County:

I, ____, Secretary of State, do hereby certify that the names of the candidates to appear on the June ____, 20__, Peace and Freedom Party presidential preference primary ballot, in the order in which they are to appear, are:

_____	_____
_____	_____
etc.	etc.

I further certify that the following list contains the name and post office address of each person who is entitled to be voted for at the June ____, 20__, Peace and Freedom Party presidential primary election as a candidate for delegate to the next national convention of the ____ Party with which the Peace and Freedom Party of California is affiliated on the national level. I further certify that the groups of candidates for delegate each appear under the name of the person for whom the group has expressed a preference as nominee of the Peace and Freedom Party for President, or under the name of the group chairperson in case of a group not expressing a preference, and that the groups are listed in the order in which they are to appear on the national convention delegate portion of the Peace and Freedom Party presidential primary ballot.

LIST OF CANDIDATES FOR NATIONAL CONVENTION DELEGATE

PEACE AND FREEDOM PARTY

Candidates preferring

_____

Name	Address
Top of group	
1 _____	_____
2 _____	_____
3 _____	_____
etc.	etc.

Candidates expressing no preference (Name of chairperson)

_____

Name	Address
Top of group	
1 _____	_____

2 _____ _____
3 _____ _____
etc. etc.

Dated at Sacramento, California, this ____ day of _____, 20___.

(SEAL) _____
Secretary of State

SEC. 10. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 818

An act to amend Section 65584.1 of the Government Code, and to amend Sections 17021.6, 18021.7, 50451, 50452, and 50453 of, and to repeal Section 50524 of, the Health and Safety Code, relating to the statewide housing plan.

[Approved by Governor September 27, 2004. Filed with Secretary of State September 27, 2004.]

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

SECTION 1. Section 65584.1 of the Government Code is amended 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 pursuant to Section 65584. A city, county, or city and county may charge a fee, not to exceed the amount charged in the aggregate to the city, county, or city and county by the council of governments, to reimburse it for the cost of the 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 the fee pursuant to Section 66016, except that if the fee creates revenue

in excess of actual costs, those revenues shall be refunded to the payers of the fee.

SEC. 2. Section 17021.6 of the Health and Safety Code is amended to read:

17021.6. (a) The owner of any employee housing who has qualified or intends to qualify for a permit to operate pursuant to this part may invoke this section.

(b) Any employee housing consisting of no more than 12 beds in a group quarters or 12 units or spaces designed for use by a singe family or household shall be deemed an agricultural land use designation for the purposes of this section. For the purpose of all local ordinances, employee housing shall not be deemed a use that implies that the employee housing is an activity that differs in any other way from an agricultural use. No conditional use permit, zoning variance, or other zoning clearance shall be required of this employee housing that is not required of any other agricultural activity in the same zone. The permitted occupancy in employee housing in an agricultural zone shall include agricultural employees who do not work on the property where the employee housing is located.

(c) Except as otherwise provided in this part, employee housing consisting of no more than 12 beds in a group quarters or 12 units or spaces designed for use by a single family or household shall not be subject to any business taxes, local registration fees, use permit fees, or other fees to which other agricultural activities in the same zone are not likewise subject. Nothing in this subdivision shall be construed to forbid the imposition of local property taxes, fees for water services and garbage collection, fees for normal inspections, local bond assessments, and other fees, charges, and assessments to which other agricultural activities in the same zone are likewise subject. Neither the State Fire Marshal nor any local public entity shall charge any fee to the owner, operator, or any resident for enforcing fire inspection regulation pursuant to state law or regulation or local ordinance, with respect to employee housing that serves 12 or fewer persons.

(d) For the purposes of any contract, deed, or covenant for the transfer of real property, employee housing consisting of no more than 12 beds in a group quarters or 12 units or spaces designed for use by a single family or household shall be considered an agricultural use of property, notwithstanding any disclaimers to the contrary. For purposes of this section, ''employee housing'' includes employee housing defined in subdivision (b) of Section 17008, even if the housing accommodations or property are not located in a rural area, as defined by Section 50101.

(e) The Legislature hereby declares that it is the policy of this state that each county and city shall permit and encourage the development and use of sufficient numbers and types of employee housing facilities

as are commensurate with local need. This section shall apply equally to any charter city, general law city, county, city and county, district, and any other local public entity.

(f) If any owner who invokes the provisions of this section fails to maintain a permit to operate pursuant to this part throughout the first 10 consecutive years following the issuance of the original certificate of occupancy, both of the following shall occur:

(1) The enforcement agency shall notify the appropriate local government entity.

(2) The public agency that has waived any taxes, fees, assessments, or charges for employee housing pursuant to this section may recover the amount of those taxes, fees, assessments, or charges from the landowner, less 10 percent of that amount for each year that a valid permit has been maintained.

(g) Subdivision (f) shall not apply to an owner of any prospective, planned, or unfinished employee housing facility who has applied to the appropriate state and local public entities for a permit to construct or operate pursuant to this part prior to January 1, 1996.

SEC. 3. Section 18021.7 of the Health and Safety Code is amended to read:

18021.7. (a) (1) In addition to other remedies provided in this part, the Director of Housing and Community Development or his or her designee may issue a citation that assesses a civil penalty payable to the department to any licensee who violates Section 18021.5, 18029.6, or 18030, subdivision (b) of Section 18032, Section 18035, 18035.1, 18035.2, 18035.3, 18036, 18039, 18045, 18045.5, 18045.6, 18046, or 18058, subdivision (a) of Section 18059, subdivision (b) of Section 18059.5, subdivision (c) of Section 18060, subdivision (c) of Section 18060.5, Section 18061, subdivision (d), (i), or (j) of Section 18061.5, subdivision (a) or (b) of Section 18062, subdivision (a), (b), (d), (e), (f), (g), or (h) of Section 18062.2, subdivision (c) of Section 18063, or Section 18080.5.

(2) A violation of subdivision (d) of Section 18060.5 is also cause for citation if both the dealer and the manufacturer receive written notice of a warranty complaint from the complainant, from the department, or another source of information, and, at a minimum, the 90-day period provided for correction of substantial defects pursuant to Section 1797.7 of the Civil Code has expired.

(3) Each citation and related civil penalty assessment shall be issued no later than one year after discovery of the violation.

(b) The amount of any civil penalty assessed pursuant to subdivision (a) shall be one hundred dollars ($100) for each violation, but shall be increased to two hundred fifty dollars ($250) for each subsequent violation of the same prohibition for which a citation for the subsequent

violation is issued within one year of the citation for the previous violation. The violation or violations giving cause for the citation shall be corrected if applicable, and payment of the civil penalty shall be remitted to the department within 45 days of the date of issuance of the citation. Civil penalties received by the department pursuant to this section shall be deposited in the Mobilehome-Manufactured Home Revolving Fund.

(c) Any person or entity served a citation pursuant to this section may petition for, and shall be granted, an informal hearing before the director or his or her designee. The petition shall be a written request briefly stating the grounds for the request. Any petition to be considered shall be received by the department within 30 days of the date of issuance of the citation.

(d) Upon receipt of a timely and complying petition, the department shall suspend enforcement of the citation and set a time and place for the informal hearing and shall give the licensee written notice thereof. The hearing shall commence no later than 30 days following receipt of the petition or at another time scheduled by the department pursuant to a request by the licensee or department if good and sufficient cause exists. If the licensee fails to appear at the time and place scheduled for the hearing, the department may notify the licensee in writing that the petition is dismissed and that compliance with terms of the citation shall occur within 10 days after receipt of the notification.

(e) The department shall notify the petitioner in writing of its decision and the reasons therefor within 30 days following conclusion of the informal hearing held pursuant to this section. If the decision upholds the citation, in whole or in part, the licensee shall comply with the citation in accordance with the decision within 30 days after the decision is mailed by the department.

(f) Nothing in this section shall be construed to preclude remedies available under other provisions of law.

SEC. 4. Section 50451 of the Health and Safety Code is amended to read:

50451. The California Statewide Housing Plan shall incorporate a statement of housing goals, policies, and objectives, as well as all of the following segments:

(a) An evaluation and summary of housing conditions throughout the state, with particular emphasis upon the availability of housing for all economic segments of the state. The evaluation shall include summary statistics for all counties, all multicounty metropolitan areas, and rural areas, as defined and designated by the Bureau of the Census of the United States Department of Commerce, rather than as defined in Section 50101. The evaluation shall include the existing distribution of housing by type, size, gross rent, value, and, to the extent data is

available, condition, and the existing distribution of households by gross income, size, and ethnic character for each of those areas.

(b) A determination of the statewide need for housing development for the year the plan is revised and projected four additional years ahead. The determination of statewide need shall be established as the minimum number of units necessary to be built or rehabilitated in order to provide sufficient housing to house all residents of the state in standard, uncrowded units in suitable locations.

(c) Goals for the provision of housing assistance for the year the plan is revised and projected four additional years ahead. The goals shall be established as the minimum number of households to be assisted that will result in achieving, by the fourth subsequent year, a substantial reduction in the number of very low income households and other persons and families of low or moderate income constrained to pay more than 30 percent of their gross income for housing. Income groups to be considered in establishing the goals shall be designated by the department and shall include households a significant number of which are required to pay more than 30 percent of their gross income for housing in the fiscal year the plan is revised, as determined by the department.

(d) An identification of governmental and nongovernmental constraints and obstacles and specific recommendations for their removal.

(e) An analysis of state and local housing and building codes and their enforcement. The analysis shall include consideration of whether those codes contain sufficient flexibility to respond to new methods of construction and new materials.

(f) Recommendations for actions by federal, state, and local governments and the private sector that will contribute to the attainment of the housing goals established for California.

(g) A housing strategy that coordinates the housing assistance and activities of state and local agencies, including the provision of housing assistance for various population groups including, but not limited to, elderly persons, persons with disabilities, large families, families where a female is the head of the household, farmworker households, and other specific population groups as deemed appropriate by the department. To inform the strategy, the department shall, to the extent possible, do the following:

(1) Consider information compiled by the University of California pursuant to Section 9101.5 of the Welfare and Institutions Code, and from provider and consumer organizations as available.

(2) Consult with various state departments, including the California Department of Aging, the State Department of Social Services, the State Department of Health Services, the State Department of Mental Health,

the Employment Development Department, the State Department of Developmental Services, and other state departments or agencies to obtain information deemed relevant to the housing needs of populations addressed in the housing strategy. This paragraph shall not be construed to require activity beyond the customary scope of the department's planning process.

(h) A review of housing assistance policies, goals, and objectives affecting the homeless.

SEC. 5. Section 50452 of the Health and Safety Code is amended to read:

50452. The department shall update and provide a revision of the California Statewide Housing Plan to the Legislature by January 1, 2006, by January 1, 2009, and every four years thereafter. The revisions shall contain all of the following segments:

(a) A comparison of the housing need for the preceding four years with the amount of building permits issued and mobilehome units sold in those fiscal years.

(b) A revision of the determination of the statewide need for housing development specified in subdivision (b) of Section 50451 for the current year and projected four additional years ahead.

(c) A revision of the housing assistance goals specified in subdivision (c) of Section 50451 for the current year and projected four additional years ahead.

(d) A revision of the evaluation required by subdivision (a) of Section 50451 as new census or other survey data become available. The revision shall contain an evaluation and summary of housing conditions throughout the state and may highlight data for multicounty or regional areas, as determined by the department. The revision shall include a discussion of the housing needs of various population groups, including, but not limited to, the elderly persons, disabled persons, large families, families where a female is the head of the household, and farmworker households.

(e) An updating of recommendations for actions by federal, state, and local governments and the private sector which will facilitate the attainment of housing goals established for California.

The Legislature may review the plan and the updates of the plan and transmit its comments on the plan or updates of the plan to the Governor, the Secretary of the Business, Transportation, and Housing Agency, and the Director of Housing and Community Development.

SEC. 6. Section 50453 of the Health and Safety Code is amended to read:

50453. The California Statewide Housing Plan developed pursuant to Section 50450 shall provide a reference guide for local housing market studies and for local housing elements required by Section 65302

of the Government Code. It is also intended to provide a framework for local housing plans.

SEC. 7. Section 50524 of the Health and Safety Code is repealed.

CHAPTER 819

An act to amend Sections 1502 and 2117 of, and to add Sections 1502.1 and 2117.1 to, the Corporations Code, and to amend Section 12186 of the Government Code, relating to corporations, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 2004. Filed with Secretary of State September 27, 2004.]

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

SECTION 1. (a) It is the intent of the Legislature to provide for the timely and accurate disclosure of information to the public regarding key relationships and activities of public corporations doing business in California.

(b) It is the intent of the Legislature that the California Corporate Disclosure Act serve to provide critical items of information about a corporation in one centralized location where consumers, investors, and taxpayers can locate the information quickly and efficiently. While much of the information required under the act is provided to the federal government through regular filings to the Securities and Exchange Commission, the reports filed with the Securities and Exchange Commission are not readily searchable or understood by the average consumer or investor.

(c) It is further the intent of the Legislature that any inconsistencies or asymmetries between disclosures made pursuant to Sections 1502, 1502.1, 2117, 2117.1, 6210, and 8210 of the Corporations Code and disclosures or filings made pursuant to federal securities law shall not be construed to infer anything beyond the information disclosed.

SEC. 2. Section 1502 of the Corporations Code is amended to read:

1502. (a) Every corporation shall file, within 90 days after the filing of its original articles and annually thereafter during the applicable filing period, on a form prescribed by the Secretary of State, a statement containing all of the following:

(1) The names and complete business or residence addresses of its incumbent directors.

(2) The number of vacancies on the board, if any.

(3) The names and complete business or residence addresses of its chief executive officer, secretary, and chief financial officer.

(4) The street address of its principal executive office.

(5) If the address of its principal executive office is not in this state, the street address of its principal business office in this state, if any.

(6) A statement of the general type of business that constitutes the principal business activity of the corporation (for example, manufacturer of aircraft; wholesale liquor distributor; or retail department store).

(b) The statement required by subdivision (a) shall also designate, as the agent of the corporation for the purpose of service of process, a natural person residing in this state or a corporation that has complied with Section 1505 and whose capacity to act as an agent has not terminated. If a natural person is designated, the statement shall set forth that person's complete business or residence address. If a corporate agent is designated, no address for it shall be set forth.

(c) If there has been no change in the information in the last filed statement of the corporation on file in the Secretary of State's office, the corporation may, in lieu of filing the statement required by subdivisions (a) and (b), advise the Secretary of State, on a form prescribed by the Secretary of State, that no changes in the required information have occurred during the applicable filing period.

(d) For the purposes of this section, the applicable filing period for a corporation shall be the calendar month during which its original articles were filed and the immediately preceding five calendar months. The Secretary of State shall mail a form for compliance with this section to each corporation approximately three months prior to the close of the applicable filing period. The form shall state the due date thereof and shall be mailed to the last address of the corporation according to the records of the Secretary of State. The failure of the corporation to receive the form is not an excuse for failure to comply with this section.

(e) Whenever any of the information required by subdivision (a) is changed, the corporation may file a current statement containing all the information required by subdivisions (a) and (b). In order to change its agent for service of process or the address of the agent, the corporation must file a current statement containing all the information required by subdivisions (a) and (b). Whenever any statement is filed pursuant to this section, it supersedes any previously filed statement and the statement in the articles as to the agent for service of process and the address of the agent.

(f) The Secretary of State may destroy or otherwise dispose of any statement filed pursuant to this section after it has been superseded by the filing of a new statement.

(g) This section shall not be construed to place any person dealing with the corporation on notice of, or under any duty to inquire about, the existence or content of a statement filed pursuant to this section.

(h) The statement required by subdivision (a) shall be available and open to the public for inspection. The Secretary of State, not later than December 31, 2004, shall provide access to all information contained in this statement by means of an online database.

(i) In addition to any other fees required, a corporation shall pay a five-dollar ($5) disclosure fee when filing the statement required by subdivision (a). One-half of the fee shall be utilized to further the provisions of this section, including the development and maintenance of the online database required by subdivision (h), and one-half shall be deposited into the Victims of Corporate Fraud Compensation Fund established in Section 1502.5.

(j) A corporation shall certify that the information it provides pursuant to subdivisions (a) and (b) is true and correct. No claim may be made against the state for inaccurate information contained in the statements.

SEC. 3. Section 1502.1 is added to the Corporations Code, to read:

1502.1. (a) In addition to the statement required pursuant to Section 1502, every publicly traded corporation shall file annually, within 150 days after the end of its fiscal year, a statement, on a form prescribed by the Secretary of State, that includes all of the following information:

(1) The name of the independent auditor that prepared the most recent auditor's report on the corporation's annual financial statements.

(2) A description of other services, if any, performed for the corporation during its two most recent fiscal years and the period between the end of its most recent fiscal year and the date of the statement by the foregoing independent auditor, by its parent corporation, or by a subsidiary or corporate affiliate of the independent auditor or its parent corporation.

(3) The name of the independent auditor employed by the corporation on the date of the statement, if different from the independent auditor listed pursuant to paragraph (1).

(4) The compensation for the most recent fiscal year of the corporation paid to each member of the board of directors and paid to each of the five most highly compensated executive officers of the corporation who are not members of the board of directors, including the number of any shares issued, options for shares granted, and similar equity-based compensation granted to each of those persons. If the chief executive officer is not among the five most highly compensated executive officers of the corporation, the compensation paid to the chief executive officer shall also be included.

(5) A description of any loan, including the amount and terms of the loan, made to any member of the board of directors by the corporation during the corporation's two most recent fiscal years at an interest rate lower than the interest rate available from unaffiliated commercial lenders generally to a similarly-situated borrower.

(6) A statement indicating whether an order for relief has been entered in a bankruptcy case with respect to the corporation, its executive officers, or members of the board of directors of the corporation during the 10 years preceding the date of the statement.

(7) A statement indicating whether any member of the board of directors or executive officer of the corporation was convicted of fraud during the 10 years preceding the date of the statement, if the conviction has not been overturned or expunged.

(8) A description of any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the corporation or any of its subsidiaries is a party or of which any of their property is the subject, as specified by Item 103 of Regulation S-K of the Securities Exchange Commission (Section 229.103 of Title 12 of the Code of Federal Regulations). A description of any material legal proceeding during which the corporation was found legally liable by entry of a final judgment or final order that was not overturned on appeal during the five years preceding the date of the statement.

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

(1) ''Publicly traded corporation'' means a corporation, as defined in Section 162, that is an issuer as defined in Section 3 of the Securities Exchange Act of 1934, as amended (15 U.S.C. Sec. 78c), and has at least one class of securities listed or admitted for trading on a national securities exchange, on the National or Small-Cap Markets of the NASDAQ Stock Market, on the OTC-Bulletin Board, or on the electronic service operated by Pink Sheets, LLC.

(2) ''Executive officer'' means the chief executive officer, president, any vice president in charge of a principal business unit, division, or function, any other officer of the corporation who performs a policymaking function, or any other person who performs similar policymaking functions for the corporation.

(3) ''Compensation'' as used in paragraph (4) of subdivision (a) means all plan and nonplan compensation awarded to, earned by, or paid to the person for all services rendered in all capacities to the corporation and to its subsidiaries, as the compensation is specified by Item 402 of Regulation S-K of the Securities and Exchange Commission (Section 229.402 of Title 17 of the Code of Federal Regulations).

(4) ''Loan'' as used in paragraph (5) of subdivision (a) excludes an advance for expenses permitted under subdivision (d) of Section 315, the corporation's payment of life insurance premiums permitted under

subdivision (e) of Section 315, and an advance of expenses permitted under Section 317.

(c) This statement shall be available and open to the public for inspection. The Secretary of State, not later than December 31, 2004, shall provide access to all information contained in this statement by means of an online database.

(d) A corporation shall certify that the information it provides pursuant to this section is true and correct. No claim may be made against the state for inaccurate information contained in statements filed under this section with the Secretary of State.

SEC. 4. Section 2117 of the Corporations Code is amended to read:

2117. (a) Every foreign corporation (other than a foreign association) qualified to transact intrastate business shall file, annually during the applicable filing period, on a form prescribed by the Secretary of State, a statement containing the following:

(1) The names and complete business or residence addresses of its chief executive officer, secretary, and chief financial officer.

(2) The street address of its principal executive office.

(3) The street address of its principal business office in this state, if any.

(4) A statement of the general type of business that constitutes the principal business activity of the corporation (for example, manufacturer of aircraft; wholesale liquor distributor; or retail department store).

(b) The statement required by subdivision (a) shall also designate, as the agent of the corporation for the purpose of service of process, a natural person residing in this state or a corporation that has complied with Section 1505 and whose capacity to act as the agent has not terminated. If a natural person is designated, the statement shall set forth the person's complete business or residence address. If a corporate agent is designated, no address for it shall be set forth.

(c) The statement required by subdivision (a) shall be available and open to the public for inspection. The Secretary of State, not later than December 31, 2004, shall provide access to all information contained in the statement by means of an online database.

(d) In addition to any other fees required, a foreign corporation shall pay a five-dollar ($5) disclosure fee upon filing the statement required by subdivision (a). One-half of the fee shall be utilized to further the provisions of this section, including the development and maintenance of the online database required by subdivision (d), and one-half shall be deposited into the Victims of Corporate Fraud Compensation Fund established in Section 1502.5.

(e) Whenever any of the information required by subdivision (a) is changed, the corporation may file a current statement containing all the information required by subdivisions (a) and (b). In order to change its

agent for service of process or the address of the agent, the corporation shall file a current statement containing all the information required by subdivisions (a) and (b). Whenever any statement is filed pursuant to this section, it supersedes any previously filed statement and the statement in the filing pursuant to Section 2105.

(f) Subdivisions (c), (d), (f), and (g) of Section 1502 apply to statements filed pursuant to this section, except that ''articles'' shall mean the filing pursuant to Section 2105, and ''corporation'' shall mean a foreign corporation.

SEC. 5. Section 2117.1 is added to the Corporations Code, to read:

2117.1. (a) In addition to the statement required pursuant to Section 2117, every publicly traded foreign corporation shall file annually, within 150 days after the end of its fiscal year, on a form prescribed by the Secretary of State, a statement that includes all of the following information:

(1) The name of the independent auditor that prepared the most recent auditor's report on the publicly traded foreign corporation's annual financial statements.

(2) A description of other services, if any, performed for the publicly traded foreign corporation during its two most recent fiscal years and the period between the end of its most recent fiscal year and the date of the statement by the foregoing independent auditor, by its parent corporation, or by a subsidiary or corporate affiliate of the independent auditor or its parent corporation.

(3) The name of the independent auditor employed by the foreign corporation on the date of the statement, if different from the independent auditor listed pursuant to paragraph (1).

(4) The compensation for the most recent fiscal year of the publicly traded foreign corporation paid to each member of the board of directors and paid to each of the five most highly compensated executive officers of the foreign corporation who are not members of the board of directors, including the number of any shares issued, options for shares granted, and similar equity-based compensation granted to each of those persons. If the chief executive officer is not among the five most highly compensated executive officers of the corporation, the compensation paid to the chief executive officer shall also be included.

(5) A description of any loan, including the amount and terms of the loans, made to any member of the board of directors by the publicly traded foreign corporation during the foreign corporation's two most recent fiscal years at an interest rate lower than the interest rate available from unaffiliated commercial lenders generally to a similarly situated borrower.

(6) A statement indicating whether an order for relief has been entered in a bankruptcy case with respect to the foreign corporation, its executive

officers, or members of the board of directors of the foreign corporation during the 10 years preceding the date of the statement.

(7) A statement indicating whether any member of the board of directors or executive officer of the publicly traded foreign corporation was convicted of fraud during the 10 years preceding the date of the statement, which conviction has not been overturned or expunged.

(8) A description of any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the corporation or any of its subsidiaries is a party or of which any of their property is the subject, as specified by Item 103 of Regulation S-K of the Securities Exchange Commission (Section 229.103 of Title 12 of the Code of Federal Regulations). A description of any material legal proceeding during which the corporation was found legally liable by entry of a final judgment or final order that was not overturned on appeal during the five years preceding the date of the statement.

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

(1) ''Publicly traded foreign corporation'' means a foreign corporation, as defined in Section 171, that is an issuer as defined in Section 3 of the Securities Exchange Act of 1934, as amended (15 U.S.C. Sec. 78c), and has at least one class of securities listed or admitted for trading on a national securities exchange, on the National or Small-Cap Markets of the NASDAQ Stock Market, on the OTC-Bulletin Board, or on the electronic service operated by Pink Sheets, LLC.

(2) ''Executive officer'' means the chief executive officer, president, any vice president in charge of a principal business unit, division, or function, any other officer of the corporation who performs a policymaking function, or any other person who performs similar policymaking functions for the corporation.

(3) ''Compensation'' as used in paragraph (4) of subdivision (a) means all plan and nonplan compensation awarded to, earned by, or paid to the person for all services rendered in all capacities to the corporation and to its subsidiaries, as the compensation is specified by Item 402 of Regulation S-K of the Securities and Exchange Commission (Section 229.402 of Title 17 of the Code of Federal Regulations).

(4) ''Loan'' as used in paragraph (5) of subdivision (a) excludes an advance for expenses, the foreign corporation's payment of life insurance premiums, and an advance of litigation expenses, in each instance as permitted according to the applicable law of the state or place of incorporation or organization of the foreign corporation.

(c) This statement shall be available and open to the public for inspection. The Secretary of State, not later than December 31, 2004, shall provide access to all information contained in this statement by means of an online database.

(d) A foreign corporation shall certify that the information it provides pursuant to this section is true and correct. No claim may be made against the state for inaccurate information contained in statements filed under this section with the Secretary of State.

SEC. 6. Section 12186 of the Government Code is amended to read:

12186. The fees for corporate filings are the following:

(a) Issuing a certificate of reservation of corporate name: Ten dollars ($10).

(b) Registering a corporate name for the calendar year pursuant to Section 2101 of the Corporations Code: Fifty dollars ($50).

(c) Filing articles of incorporation providing for shares: One hundred dollars ($100).

(d) Filing articles of incorporation not providing for shares: Thirty dollars ($30).

(e) Filing the statement and designation upon the qualification of a foreign, nonprofit, nonstock corporation, and of a foreign corporation organized for educational, religious, scientific, or charitable purposes, and not issuing shares: Thirty dollars ($30).

(f) Filing the statement and designation upon the qualification of any other foreign corporation not provided for in subdivision (e): One hundred dollars ($100).

(g) Filing the statement of information for every corporation pursuant to Sections 1502, 6210, 8210, and 9660 of the Corporations Code: Twenty dollars ($20).

(h) Filing the statement of information for every foreign corporation (other than a foreign association) qualified to transact intrastate business pursuant to Section 2117 of the Corporations Code: Twenty dollars ($20).

(i) Filing changes to any statement of information subject to subdivisions (g) and (h): No fee.

(j) Filing the statement pursuant to Section 1502.1 or 2117.1 of the Corporations Code: No fee.

(k) Filing for the merger of one corporation solely with one or more other corporations: One hundred dollars ($100).

(*l*) Filing for the merger of one or more corporations with one or more other types of business entities: One hundred fifty dollars ($150).

(m) Filing a certificate of amendment changing the status of a nonprofit corporation into a stock corporation: Seventy dollars ($70).

(n) Filing a certificate of election to dissolve a corporation, a certificate of dissolution of a corporation, or a certificate of surrender, or of change of address: No fee.

(o) Filing a statement of address by a foreign lending institution on or before June 30 of each year pursuant to Section 2104 of the Corporations Code: Fifty dollars ($50).

(p) Filing any other instrument by or on behalf of a corporation, unless another fee is specified by law: Thirty dollars ($30).

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 take effect as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 820

An act to amend Section 1102.8 of the Labor Code, relating to whistleblowers, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 2004. Filed with Secretary of State September 27, 2004.]

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

SECTION 1. Section 1102.8 of the Labor Code is amended to read:

1102.8. (a) An employer shall prominently display in lettering larger than size 14 point type a list of employees' rights and responsibilities under the whistleblower laws, including the telephone number of the whistleblower hotline described in Section 1102.7.

(b) Any state agency required to post a notice pursuant to Section 8548.2 of the Government Code or subdivision (b) of Section 6128 of the Penal Code shall be deemed in compliance with the posting requirement set forth in subdivision (a) if the notice posted pursuant to Section 8548.2 of the Government Code or subdivision (b) of Section 6128 of the Penal Code also contains the whistleblower hotline number described in Section 1102.7.

SEC. 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 production of signs that comply with legal requirements and can be posted to inform employees of their rights and responsibilities under the whistleblower laws at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 821

An act to amend, repeal, and add Sections 3102 and 3103 of, and to add and repeal Section 3103.5 of, the Elections Code, relating to elections, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 2004. Filed with Secretary of State September 27, 2004.]

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

SECTION 1. Section 3102 of the Elections Code is amended to read:

3102. (a) Applications for the ballots of special absentee voters shall be received and, except as provided in Section 3103.5, the ballots shall be received and canvassed, at the same time and under the same procedure as absent voter ballots, insofar as that procedure is not inconsistent with this chapter.

(b) This section shall remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends that date.

SEC. 2. Section 3102 is added to the Elections Code, to read:

3102. (a) Applications for the ballots of special absentee voters shall be received, and the ballots shall be received and canvassed at the same time and under the same procedure as absent voter ballots, insofar as that procedure is not inconsistent with this chapter.

(b) This section shall become operative January 1, 2009.

SEC. 3. Section 3103 of the Elections Code is amended to read:

3103. (a) Any application made pursuant to this chapter that is received by the elections official prior to the 60th day before the election shall be kept and processed on or after the 60th day before the election.

(b) The elections official shall immediately send the voter a ballot in a form prescribed and provided by the Secretary of State. The elections official shall send with the ballot a list of all candidates who have qualified for the ballot by the 60th day before the election and a list of all measures that are to be submitted to the voters and on which the voter is qualified to vote. The voter shall be entitled to write in the name of any specific candidate seeking nomination or election to any office listed on the ballot.

(c) Notwithstanding Section 15341 or any other provision of law, any name written upon a ballot for a particular office pursuant to subdivision (b) shall be counted for the office or nomination, providing the candidate whose name has been written on the ballot has, as of the date of the election, qualified to have his or her name placed on the ballot for the office, or has qualified as a write-in candidate for the office.

(d) Except as provided in Section 3103.5, the elections official shall receive and canvass special absentee voter ballots described in this section under the same procedure as absent voter ballots, insofar as that procedure is not inconsistent with this section.

(e) In the event that a voter executes a special absentee ballot pursuant to this section and an application for an absentee ballot pursuant to Section 3101, the elections official shall cancel the voter's permanent absent voter status, and process the application in accordance with Chapter 1 (commencing with Section 3000).

(f) Notwithstanding any other provision of law, a special absentee voter who qualifies pursuant to this section may, by facsimile transmission, register to vote and apply for an absent voter's ballot. Upon request, the elections official may send to the qualified special absentee voter either by mail, facsimile, or electronic transmission the special absentee ballot or, if available, an absent voter's ballot pursuant to Chapter 1 (commencing with Section 3000).

(g) 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. 4. Section 3103 is added to the Elections Code, to read:

3103. (a) Any application made pursuant to this chapter that is received by the elections official prior to the 60th day before the election shall be kept and processed on or after the 60th day before the election.

(b) The elections official shall immediately send the voter a ballot in a form prescribed and provided by the Secretary of State. The elections official shall send with the ballot a list of all candidates who have qualified for the ballot by the 60th day before the election and a list of all measures that are to be submitted to the voters and on which the voter is qualified to vote. The voter shall be entitled to write in the name of any specific candidate seeking nomination or election to any office listed on the ballot.

(c) Notwithstanding Section 15341 or any other provision of law, any name written upon a ballot for a particular office pursuant to subdivision (b) shall be counted for the office or nomination, providing the candidate whose name has been written on the ballot has, as of the date of the election, qualified to have his or her name placed on the ballot for the office, or has qualified as a write-in candidate for the office.

(d) The elections official shall receive and canvass special absentee voter ballots described in this section under the same procedure as absent voter ballots, insofar as that procedure is not inconsistent with this section.

(e) In the event that a voter executes a special absentee ballot pursuant to this section and an application for an absentee ballot pursuant to Section 3101, the elections official shall reject the voted ballot

previously cast, cancel the voter's permanent absent voter status, and process the application in accordance with Chapter 1 (commencing with Section 3000).

(f) Notwithstanding any other provision of law, a special absentee voter who qualifies pursuant to this section may, by facsimile transmission, register to vote and apply for an absent voter's ballot. Upon request, the elections official may send to the qualified special absentee voter either by mail, facsimile, or electronic transmission the special absentee ballot or, if available, an absent voter's ballot pursuant to Chapter 1 (commencing with Section 3000).

(g) This section shall become operative January 1, 2009.

SEC. 5. Section 3103.5 is added to the Elections Code, to read:

3103.5. (a) (1) A special absentee voter who is temporarily living outside of the territorial limits of the United States or the District of Columbia may return his or her ballot by facsimile transmission. To be counted, the ballot returned by facsimile transmission must be received by the voter's elections official no later than the closing of the polls on election day and must be accompanied by an identification envelope containing all of the information required by Section 3011 and an oath of voter declaration in substantially the following form:

OATH OF VOTER

I, _____, acknowledge that by returning my voted ballot by facsimile transmission I have waived my right to have my ballot kept secret. Nevertheless, I understand that, as with any absent voter, my signature, whether on this oath of voter form or my identification envelope, will be permanently separated from my voted ballot to maintain its secrecy at the outset of the tabulation process and thereafter.

My residence address is _____.
(Street Address) (City) (ZIP Code)

My current mailing address is _____.
(Street Address) (City) (ZIP Code)

My e–mail address is _____. My facsimile transmission number is _____.

I am a resident of _____ County, State of California, and I have not applied, nor intend to apply, for an absentee ballot from any other jurisdiction for the same election.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated this _____ day of _____, 20_____.

(Signed) _____
voter (power of attorney cannot be accepted)

YOUR BALLOT CANNOT BE COUNTED UNLESS YOU SIGN THE ABOVE OATH AND INCLUDE IT WITH YOUR BALLOT AND IDENTIFICATION ENVELOPE, ALL OF WHICH ARE RETURNED BY FACSIMILE TRANSMISSION.

(2) Notwithstanding the voter's waiver of the right to a secret ballot, each elections official shall adopt appropriate procedures to protect the secrecy of absentee ballots returned by facsimile transmission.

(3) Upon receipt of an absentee ballot returned by facsimile transmission, the elections official shall determine the voter's eligibility to vote by comparing the signature on the return information with the signature on the voter's affidavit of registration. The ballot shall be duplicated and all materials preserved according to procedures set forth in this code.

(4) Notwithstanding paragraph (1), a special absentee voter who is permitted to return his or her ballot by facsimile transmission is, nonetheless, encouraged to return his or her ballot by mail or in person if possible. A special absentee voter should return a ballot by facsimile transmission only if doing so is necessary for the ballot to be received before the close of polls on election day.

(b) The Secretary of State shall make a recommendation to the Legislature, no later than December 31, 2008, on the benefits and problems, if any, derived from permitting qualified special absentee voters to return their ballots by facsimile transmission, and shall include in the recommendation the number of ballots returned by facsimile transmission pursuant to this section.

(c) 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. 6. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

SEC. 7. 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 special absentee voters who are temporarily living outside the territorial limits of the United States or the District of Columbia are provided the opportunity in time for the November 2, 2004, statewide general election to return their ballots by facsimile transmission, it is necessary that this act take immediate effect.

CHAPTER 822

An act to amend Sections 22978.4 and 22980.1 of, and to add Section 22971.4 to, the Business and Professions Code, and to amend Section 308 of the Penal Code, relating to cigarettes, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 2004. Filed with Secretary of State September 27, 2004.]

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

SECTION 1. Section 22971.4 is added to the Business and Professions Code, to read:

22971.4. No person is subject to the requirements of this division if that person is exempt from regulation under the United States Constitution, the laws of the United States, or the California Constitution.

SEC. 2. Section 22978.4 of the Business and Professions Code is amended to read:

22978.4. (a) Each distributor and each wholesaler shall include the following information on each invoice for the sale of cigarettes or tobacco products:

(1) The name, address, and telephone number of the distributor or wholesaler.

(2) The license number of the distributor or the wholesaler as provided by the board.

(3) The following statement: ''All California cigarette and tobacco product taxes are included in the total amount of this invoice.''

(4) The name, address, and license number of the retailer, distributor, or wholesaler to whom cigarettes or tobacco products are sold.

(5) An itemized listing of the cigarettes or tobacco products sold.

(b) Each invoice for the sale of cigarettes or tobacco products shall be legible and readable.

(c) Failure to comply with the requirements of this section shall be a misdemeanor subject to penalties pursuant to Section 22981.

SEC. 3. Section 22980.1 of the Business and Professions Code is amended to read:

22980.1. (a) No manufacturer shall sell cigarettes to a distributor, wholesaler, importer, retailer, or any other person who is not licensed pursuant to this division or whose license has been suspended or revoked.

(b) (1) Except as provided in paragraph (2), no distributor, wholesaler, or importer shall sell cigarettes or tobacco products to a retailer, wholesaler, distributor, or any other person who is not licensed pursuant to this division or whose license has been suspended or revoked.

(2) This subdivision does not apply to any sale of cigarettes or tobacco products by a distributor, wholesaler, importer, or any other person to a retailer, wholesaler, distributor, or any other person that the state, pursuant to the United States Constitution, the laws of the United States, or the California Constitution, is prohibited from regulating.

(c) No retailer, distributor, wholesaler, or importer shall purchase packages of cigarettes from a manufacturer who is not licensed pursuant to this division or whose license has been suspended or revoked.

(d) No retailer, distributor, wholesaler, or importer shall purchase cigarettes or tobacco products from any person who is required to be licensed pursuant to this division but who is not licensed or whose license has been suspended or revoked.

(e) Each separate sale to, or by, a retailer, wholesaler, distributor, importer, manufacturer, or any other person who is not licensed pursuant to this division shall constitute a separate violation.

(f) No manufacturer, distributor, wholesaler, or importer may sell cigarette or tobacco products to any retailer or wholesaler whose license has been suspended or revoked unless all outstanding debts of that retailer or wholesaler that are owed to a wholesaler or distributor for cigarette or tobacco products are paid and the license of that retailer or wholesaler has been reinstated by the board. Any payment received from a retailer or wholesaler shall be credited first to the outstanding debt for cigarettes or tobacco products and must be immediately reported to the board. The board shall determine the debt status of a suspended retailer or wholesaler licensee 25 days prior to the reinstatement of the license.

(g) No importer, distributor, or wholesaler, or distributor functioning as a wholesaler, or retailer, shall purchase, obtain, or otherwise acquire any package of cigarettes to which a stamp or meter impression may not be affixed in accordance with subdivision (b) of Section 30163 of the Revenue and Taxation Code, or any cigarettes obtained from a manufacturer or importer that cannot demonstrate full compliance with all requirements of the federal Cigarette Labeling and Advertising Act (15 U.S.C. Sec. 13335a et seq.) for the reporting of ingredients added to cigarettes.

(h) Failure to comply with the provisions of this section shall be a misdemeanor subject to penalties pursuant to Section 22981.

SEC. 4. Section 308 of the Penal Code is amended to read:

308. (a) Every person, firm, or corporation which knowingly or under circumstances in which it has knowledge, or should otherwise have grounds for knowledge, sells, gives, or in any way furnishes to another person who is under the age of 18 years any tobacco, cigarette, or cigarette papers, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, products prepared from tobacco, or any controlled substance, is subject to either a criminal action for a misdemeanor or to a civil action brought by a city attorney, a county counsel, or a district attorney, punishable by a fine of two hundred dollars ($200) for the first offense, five hundred dollars ($500) for the second offense, and one thousand dollars ($1,000) for the third offense.

Notwithstanding Section 1464 or any other provision of law, 25 percent of each civil and criminal penalty collected pursuant to this subdivision shall be paid to the office of the city attorney, county counsel, or district attorney, whoever is responsible for bringing the successful action, and 25 percent of each civil and criminal penalty collected pursuant to this subdivision shall be paid to the city or county for the administration and cost of the community service work component provided in subdivision (b).

Proof that a defendant, or his or her employee or agent, demanded, was shown, and reasonably relied upon evidence of majority shall be defense to any action brought pursuant to this subdivision. Evidence of majority of a person is a facsimile of or a reasonable likeness of a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operator's license, a registration certificate issued under the federal Selective Service Act, or an identification card issued to a member of the Armed Forces.

For purposes of this section, the person liable for selling or furnishing tobacco products to minors by a tobacco vending machine shall be the person authorizing the installation or placement of the tobacco vending

machine upon premises he or she manages or otherwise controls and under circumstances in which he or she has knowledge, or should otherwise have grounds for knowledge, that the tobacco vending machine will be utilized by minors.

(b) Every person under the age of 18 years who purchases, receives, or possesses any tobacco, cigarette, or cigarette papers, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking of tobacco, products prepared from tobacco, or any controlled substance shall, upon conviction, be punished by a fine of seventy-five dollars ($75) or 30 hours of community service work.

(c) Every person, firm, or corporation that sells, or deals in tobacco or any preparation thereof, shall post conspicuously and keep so posted in his, her, or their place of business at each point of purchase the notice required pursuant to subdivision (b) of Section 22952 of the Business and Professions Code, and any person failing to do so shall, upon conviction, be punished by a fine of fifty dollars ($50) for the first offense, one hundred dollars ($100) for the second offense, two hundred fifty dollars ($250) for the third offense, and five hundred dollars ($500) for the fourth offense and each subsequent violation of this provision, or by imprisonment in a county jail not exceeding 30 days.

(d) For purposes of determining the liability of persons, firms, or corporations controlling franchises or business operations in multiple locations for the second and subsequent violations of this section, each individual franchise or business location shall be deemed a separate entity.

(e) It is the Legislature's intent to regulate the subject matter of this section. As a result, no city, county, or city and county shall adopt any ordinance or regulation inconsistent with this section.

(f) Notwithstanding any other provision of this section, the Director of Corrections may sell or supply tobacco and tobacco products, including cigarettes and cigarette papers, to any person confined in any institution or facility under his or her jurisdiction who has attained the age of 16 years, if the parent or guardian of the person consents thereto, and may permit smoking by the person in any institution or facility. No officer or employee of the Department of Corrections shall be considered to have violated this section by any act authorized by this subdivision.

SEC. 5. Section 308 of the Penal Code is amended to read:

308. (a) Every person, firm, or corporation that knowingly or under circumstances in which it has knowledge, or should otherwise have grounds for knowledge, sells, gives, or in any way furnishes to another person who is under the age of 18 years any tobacco, cigarette, or cigarette papers, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, products prepared from tobacco, or any controlled substance,

is subject to either a criminal action for a misdemeanor or to a civil action brought by a city attorney, a county counsel, or a district attorney, punishable by a fine of two hundred dollars ($200) for the first offense, five hundred dollars ($500) for the second offense, and one thousand dollars ($1,000) for the third offense.

Notwithstanding Section 1464 or any other provision of law, 25 percent of each civil and criminal penalty collected pursuant to this subdivision shall be paid to the office of the city attorney, county counsel, or district attorney, whoever is responsible for bringing the successful action, and 25 percent of each civil and criminal penalty collected pursuant to this subdivision shall be paid to the city or county for the administration and cost of the community service work component provided in subdivision (b).

Proof that a defendant, or his or her employee or agent, demanded, was shown, and reasonably relied upon evidence of majority shall be defense to any action brought pursuant to this subdivision. Evidence of majority of a person is a facsimile of or a reasonable likeness of a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operator's license, a registration certificate issued under the federal Selective Service Act, or an identification card issued to a member of the Armed Forces.

For purposes of this section, the person liable for selling or furnishing tobacco products to minors by a tobacco vending machine shall be the person authorizing the installation or placement of the tobacco vending machine upon premises he or she manages or otherwise controls and under circumstances in which he or she has knowledge, or should otherwise have grounds for knowledge, that the tobacco vending machine will be utilized by minors.

(b) Every person under the age of 18 years who purchases, receives, or possesses any tobacco, cigarette, or cigarette papers, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking of tobacco, products prepared from tobacco, or any controlled substance shall, upon conviction, be punished by a fine of seventy-five dollars ($75) or 30 hours of community service work.

(c) Every person, firm, or corporation that sells, or deals in tobacco or any preparation thereof, shall post conspicuously and keep so posted in his, her, or their place of business at each point of purchase the notice required pursuant to subdivision (b) of Section 22952 of the Business and Professions Code, and any person failing to do so shall, upon conviction, be punished by a fine of fifty dollars ($50) for the first offense, one hundred dollars ($100) for the second offense, two hundred fifty dollars ($250) for the third offense, and five hundred dollars ($500)

for the fourth offense and each subsequent violation of this provision, or by imprisonment in a county jail not exceeding 30 days.

(d) For purposes of determining the liability of persons, firms, or corporations controlling franchises or business operations in multiple locations for the second and subsequent violations of this section, each individual franchise or business location shall be deemed a separate entity.

(e) It is the Legislature's intent to regulate the subject matter of this section. As a result, no city, county, or city and county shall adopt any ordinance or regulation inconsistent with this section.

SEC. 6. It is the intent of the Legislature that the State Board of Equalization is authorized to exercise its authority, as set forth in subdivision (a) of Section 30162 of the Revenue and Taxation Code, as amended by Section 1 of Chapter 881 of the Statutes of 2002, and as set forth in subdivision (b) of Section 30162 of the Revenue and Taxation Code, as added by Section 2 of Chapter 881 of the Statutes of 2002, with regard to cigarette stamps and meter impressions in a manner that does not affect commerce within this state.

SEC. 7. Section 5 of this bill incorporates amendments to Section 308 of the Penal Code proposed by both this bill and AB 384. 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 308 of the Penal Code, and (3) this bill is enacted after AB 384, in which case Section 4 of this bill shall not become operative.

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 take measures to curtail sales of tobacco products to minors in this state, to make the necessary statutory changes to address the economic losses associated with black-market sales of cigarettes and tobacco products, and to avoid any interference with commerce within this state, it is necessary that this act take effect immediately.

CHAPTER 823

An act to amend Sections 710, 765, 767, and 1109, of, and to add Section 177 to, the Evidence Code, and to amend Sections 288, 502.9, 515, 525, 859.1, 861.5, 868.7, 939.21, 1347.5, and 11166 of, and to add Section 1127g to, the Penal Code, and to amend Sections 15610.63 and 15630 of the Welfare and Institutions Code, relating to crime.

[Approved by Governor September 28, 2004. Filed with
Secretary of State September 28, 2004.]

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

SECTION 1. It is the intent of the Legislature to enact legislation protecting the rights of developmentally disabled persons and other dependent persons who are witnesses in criminal cases and ensuring that they are given equal access to the criminal justice system.

SEC. 2. Section 177 is added to the Evidence Code, to read:

177. ''Dependent person'' means any person who has a physical or mental impairment that substantially restricts his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have significantly diminished because of age. ''Dependent person'' includes any person who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

SEC. 3. Section 710 of the Evidence Code is amended to read:

710. Every witness before testifying shall take an oath or make an affirmation or declaration in the form provided by law, except that a child under the age of 10 or a dependent person with a substantial cognitive impairment, in the court's discretion, may be required only to promise to tell the truth.

SEC. 4. Section 765 of the Evidence Code is amended to read:

765. (a) The court shall exercise reasonable control over the mode of interrogation of a witness so as to make interrogation as rapid, as distinct, and as effective for the ascertainment of the truth, as may be, and to protect the witness from undue harassment or embarrassment.

(b) With a witness under the age of 14 or a dependent person with a substantial cognitive impairment, the court shall take special care to protect him or her from undue harassment or embarrassment, and to restrict the unnecessary repetition of questions. The court shall also take special care to ensure that questions are stated in a form which is appropriate to the age or cognitive level of the witness. The court may, in the interests of justice, on objection by a party, forbid the asking of a question which is in a form that is not reasonably likely to be understood by a person of the age or cognitive level of the witness.

SEC. 5. Section 767 of the Evidence Code is amended to read:

767. (a) Except under special circumstances where the interests of justice otherwise require:

(1) A leading question may not be asked of a witness on direct or redirect examination.

(2) A leading question may be asked of a witness on cross-examination or recross-examination.

(b) The court may, in the interests of justice permit a leading question to be asked of a child under 10 years of age or a dependent person with a substantial cognitive impairment in a case involving a prosecution under Section 273a, 273d, 288.5, 368, or any of the acts described in Section 11165.1 or 11165.2 of the Penal Code.

SEC. 6. Section 1109 of the Evidence Code is amended to read:

1109. (a) (1) Except as provided in subdivision (e) or (f), in a criminal action in which the defendant is accused of an offense involving domestic violence, evidence of the defendant's commission of other domestic violence is not made inadmissible by Section 1101 if the evidence is not inadmissible pursuant to Section 352.

(2) Except as provided in subdivision (e) or (f), in a criminal action in which the defendant is accused of an offense involving abuse of an elder or dependent person, evidence of the defendant's commission of other abuse of an elder or dependent person is not made inadmissible by Section 1101 if the evidence is not inadmissible pursuant to Section 352.

(b) In an action in which evidence is to be offered under this section, the people shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, in compliance with the provisions of Section 1054.7 of the Penal Code.

(c) This section shall not be construed to limit or preclude the admission or consideration of evidence under any other statute or case law.

(d) As used in this section, ''domestic violence'' has the meaning set forth in Section 13700 of the Penal Code. ''Abuse of an elder or a dependent person'' means physical or sexual abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment that results in physical harm, pain, or mental suffering, the deprivation of care by a caregiver, or other deprivation by a custodian or provider of goods or services that are necessary to avoid physical harm or mental suffering.

(e) Evidence of acts occurring more than 10 years before the charged offense is inadmissible under this section, unless the court determines that the admission of this evidence is in the interest of justice.

(f) Evidence of the findings and determinations of administrative agencies regulating the conduct of health facilities licensed under Section 1250 of the Health and Safety Code is inadmissible under this section.

SEC. 6.5. Section 1109 of the Evidence Code is amended to read:

1109. (a) (1) Except as provided in subdivision (e) or (f), in a criminal action in which the defendant is accused of an offense involving domestic violence, evidence of the defendant's commission of other

domestic violence is not made inadmissible by Section 1101 if the evidence is not inadmissible pursuant to Section 352.

(2) Except as provided in subdivision (e) or (f), in a criminal action in which the defendant is accused of an offense involving abuse of an elder or dependent person, evidence of the defendant's commission of other abuse of an elder or dependent person is not made inadmissible by Section 1101 if the evidence is not inadmissible pursuant to Section 352.

(b) In an action in which evidence is to be offered under this section, the people shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, in compliance with the provisions of Section 1054.7 of the Penal Code.

(c) This section shall not be construed to limit or preclude the admission or consideration of evidence under any other statute or case law.

(d) As used in this section, ''domestic violence'' has the meaning set forth in Section 13700 of the Penal Code. ''Abuse of an elder or a dependent person'' means physical or sexual abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment that results in physical harm, pain, or mental suffering, the deprivation of care by a caregiver, or other deprivation by a custodian or provider of goods or services that are necessary to avoid physical harm or mental suffering. Subject to a hearing conducted pursuant to Section 352, which shall include consideration of any corroboration and remoteness in time, ''domestic violence'' has the further meaning as set forth in Section 6211 of the Family Code if the act occurred no more than five years before the charged offense.

(e) Evidence of acts occurring more than 10 years before the charged offense is inadmissible under this section, unless the court determines that the admission of this evidence is in the interest of justice.

(f) Evidence of the findings and determinations of administrative agencies regulating the conduct of health facilities licensed under Section 1250 of the Health and Safety Code is inadmissible under this section.

SEC. 7. Section 288 of the Penal Code is amended to read:

288. (a) Any person who willfully and lewdly commits any lewd or lascivious act, including any of the acts constituting other crimes provided for in Part 1, upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.

(b) (1) Any person who commits an act described in subdivision (a) by use of force, violence, duress, menace, or fear of immediate and

unlawful bodily injury on the victim or another person, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.

(2) Any person who is a caretaker and commits an act described in subdivision (a) upon a dependent person by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, with the intent described in subdivision (a), is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.

(c) (1) Any person who commits an act described in subdivision (a) with the intent described in that subdivision, and the victim is a child of 14 or 15 years, and that person is at least 10 years older than the child, is guilty of a public offense and shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not more than one year. In determining whether the person is at least 10 years older than the child, the difference in age shall be measured from the birth date of the person to the birth date of the child.

(2) Any person who is a caretaker and commits an act described in subdivision (a) upon a dependent person, with the intent described in subdivision (a), is guilty of a public offense and shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not more than one year.

(d) In any arrest or prosecution under this section or Section 288.5, the peace officer, district attorney, and the court shall consider the needs of the child victim or dependent person and shall do whatever is necessary, within existing budgetary resources, and constitutionally permissible to prevent psychological harm to the child victim or to prevent psychological harm to the dependent person victim resulting from participation in the court process.

(e) Upon the conviction of any person for a violation of subdivision (a) or (b), the court may, in addition to any other penalty or fine imposed, order the defendant to pay an additional fine not to exceed ten thousand dollars ($10,000). In setting the amount of the fine, the court shall consider any relevant factors, including, but not limited to, the seriousness and gravity of the offense, the circumstances of its commission, whether the defendant derived any economic gain as a result of the crime, and the extent to which the victim suffered economic losses as a result of the crime. Every fine imposed and collected under this section shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs pursuant to Section 13837.

If the court orders a fine imposed pursuant to this subdivision, the actual administrative cost of collecting that fine, not to exceed 2 percent

of the total amount paid, may be paid into the general fund of the county treasury for the use and benefit of the county.

(f) For purposes of paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c), the following definitions apply:

(1) ''Caretaker'' means an owner, operator, administrator, employee, independent contractor, agent, or volunteer of any of the following public or private facilities when the facilities provide care for elder or dependent persons:

(A) Twenty-four hour health facilities, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(B) Clinics.

(C) Home health agencies.

(D) Adult day health care centers.

(E) Secondary schools that serve dependent persons and postsecondary educational institutions that serve dependent persons or elders.

(F) Sheltered workshops.

(G) Camps.

(H) Community care facilities, as defined by Section 1402 of the Health and Safety Code, and residential care facilities for the elderly, as defined in Section 1569.2 of the Health and Safety Code.

(I) Respite care facilities.

(J) Foster homes.

(K) Regional centers for persons with developmental disabilities.

(L) A home health agency licensed in accordance with Chapter 8 (commencing with Section 1725) of Division 2 of the Health and Safety Code.

(M) An agency that supplies in-home supportive services.

(N) Board and care facilities.

(O) Any other protective or public assistance agency that provides health services or social services to elder or dependent persons, including, but not limited to, in-home supportive services, as defined in Section 14005.14 of the Welfare and Institutions Code.

(P) Private residences.

(2) ''Board and care facilities'' means licensed or unlicensed facilities that provide assistance with one or more of the following activities:

(A) Bathing.

(B) Dressing.

(C) Grooming.

(D) Medication storage.

(E) Medical dispensation.

(F) Money management.

(3) ''Dependent person'' means any person who has a physical or mental impairment that substantially restricts his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have significantly diminished because of age. ''Dependent person'' includes any person who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(g) Paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c) apply to the owners, operators, administrators, employees, independent contractors, agents, or volunteers working at these public or private facilities and only to the extent that the individuals personally commit, conspire, aid, abet, or facilitate any act prohibited by paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c).

(h) Paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c) do not apply to a caretaker who is a spouse of, or who is in an equivalent domestic relationship with, the dependent person under care.

SEC. 8. Section 502.9 of the Penal Code is amended to read:

502.9. Upon conviction of a felony violation under this chapter, the fact that the victim was an elder or dependent person, as defined in Section 288, shall be considered a circumstance in aggravation when imposing a term under subdivision (b) of Section 1170.

SEC. 9. Section 515 of the Penal Code is amended to read:

515. Upon conviction of a felony violation under this chapter, the fact that the victim was an elder or dependent person, as defined in Section 288, shall be considered a circumstance in aggravation when imposing a term under subdivision (b) of Section 1170.

SEC. 10. Section 525 of the Penal Code is amended to read:

525. Upon conviction of a felony violation under this chapter, the fact that the victim was an elder or dependent person, as defined in Section 288, shall be considered a circumstance in aggravation when imposing a term under subdivision (b) of Section 1170.

SEC. 11. Section 859.1 of the Penal Code is amended to read:

859.1. (a) In any criminal proceeding in which the defendant is charged with any offense specified in Section 868.8 on a minor under the age of 16 years, or a dependent person with a substantial cognitive impairment, as defined in paragraph (3) of subdivision (f) of Section 288, the court shall, upon motion of the prosecuting attorney, conduct a hearing to determine whether the testimony of, and testimony relating to, a minor or dependent person shall be closed to the public in order to protect the minor's or the dependent person's reputation.

(b) In making this determination, the court shall consider all of the following:

(1) The nature and seriousness of the offense.

(2) The age of the minor, or the level of cognitive development of the dependent person.

(3) The extent to which the size of the community would preclude the anonymity of the victim.

(4) The likelihood of public opprobrium due to the status of the victim.

(5) Whether there is an overriding public interest in having an open hearing.

(6) Whether the prosecution has demonstrated a substantial probability that the identity of the witness would otherwise be disclosed to the public during that proceeding, and demonstrated a substantial probability that the disclosure of his or her identity would cause serious harm to the witness.

(7) Whether the witness has disclosed information concerning the case to the public through press conferences, public meetings, or other means.

(8) Other factors the court may deem necessary to protect the interests of justice.

SEC. 12. Section 861.5 of the Penal Code is amended to read:

861.5. Notwithstanding subdivision (a) of Section 861, the magistrate may postpone the preliminary examination for one court day in order to accommodate the special physical, mental, or emotional needs of a child witness who is 10 years of age or younger or a dependent person, as defined in subdivision (h) of Section 288.

The magistrate shall admonish both the prosecution and defense against coaching the witness prior to the witness' next appearance in the preliminary examination.

SEC. 13. Section 868.7 of the Penal Code is amended to read:

868.7. (a) Notwithstanding any other provision of law, the magistrate may, upon motion of the prosecutor, close the examination in the manner described in Section 868 during the testimony of a witness:

(1) Who is a minor or a dependent person with a substantial cognitive impairment, as defined in paragraph (3) of subdivision (f) of Section 288, and is the complaining victim of a sex offense, where testimony before the general public would be likely to cause serious psychological harm to the witness and where no alternative procedures, including, but not limited to, videotaped deposition or contemporaneous examination in another place communicated to the courtroom by means of closed-circuit television, are available to avoid the perceived harm.

(2) Whose life would be subject to a substantial risk in appearing before the general public, and where no alternative security measures, including, but not limited to, efforts to conceal his or her features or physical description, searches of members of the public attending the

examination, or the temporary exclusion of other actual or potential witnesses, would be adequate to minimize the perceived threat.

(b) In any case where public access to the courtroom is restricted during the examination of a witness pursuant to this section, a transcript of the testimony of the witness shall be made available to the public as soon as is practicable.

This section shall become operative on January 1, 1987.

SEC. 14. Section 939.21 of the Penal Code is amended to read:

939.21. (a) Any prosecution witness before the grand jury in a proceeding involving a violation of Section 243.4, 261, 273a, 273d, 285, 286, 288, 288a, 288.5, or 289, subdivision (1) of Section 314, Section 368, 647.6, or former Section 647a, who is a minor or a dependent person, may, at the discretion of the prosecution, select a person of his or her own choice to attend the testimony of the prosecution witness for the purpose of providing support. The person chosen shall not be a witness in the same proceeding, or a person described in Section 1070 of the Evidence Code.

(b) The grand jury foreperson shall inform any person permitted to attend the grand jury proceedings pursuant to this section that grand jury proceedings are confidential and may not be discussed with anyone not in attendance at the proceedings. The foreperson also shall admonish that person not to prompt, sway, or influence the witness in any way. Nothing in this section shall preclude the presiding judge from exercising his or her discretion to remove a person from the grand jury proceeding whom the judge believes is prompting, swaying, or influencing the witness.

SEC. 15. Section 1127g is added to the Penal Code, to read:

1127g. In any criminal trial or proceeding in which a person with a developmental disability, or cognitive, mental, or communication impairment testifies as a witness, upon the request of a party, the court shall instruct the jury, as follows:

In evaluating the testimony of a person with a developmental disability, or cognitive, mental, or communication impairment, you should consider all of the factors surrounding the person's testimony, including their level of cognitive development. Although, because of his or her level of cognitive development, a person with a developmental disability, or cognitive, mental, or communication impairment may perform differently as a witness, that does not mean that a person with a developmental disability, or cognitive, mental, or communication impairment is any more or less credible a witness than another witness. You should not discount or distrust the testimony of a person with a developmental disability, or cognitive, mental, or communication impairment solely because he or she is a person with a developmental disability, or cognitive, mental, or communication impairment.

SEC. 16. Section 1347.5 of the Penal Code is amended to read:

1347.5. (a) It is the intent of the Legislature, in enacting this section, to provide the court with discretion to modify court procedures, as a reasonable accommodation, to assure that adults and children with disabilities who have been victims of an alleged sexual or otherwise specified offense are able to participate effectively in criminal proceedings. In exercising its discretion, the court shall balance the rights of the defendant against the right of the victim who has a disability to full access and participation in the proceedings, while preserving the integrity of the court's truthfinding function.

(1) For purposes of this section, the term ''disability'' is defined in paragraphs (1) and (2) of subdivision (c) of Section 11135 of the Government Code.

(2) The right of the victim is not to confront the perpetrator, but derives under both Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Sec. 794) and the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 and following) as a right to participate in or benefit from the same services or services that are equal or as effective as those enjoyed by persons without disabilities.

(b) Notwithstanding any other law, in any criminal proceeding in which the defendant is charged with a violation of Section 220, 243.4, 261, 261.5, 264.1, 273a, 273d, 285, 286, 288, 288a, 288.5, or 289, subdivision (1) of Section 314, Section 368, 647.6, or with any attempt to commit a crime listed in this subdivision, committed with or upon a person with a disability, the court in its discretion may make accommodations to support the person with a disability, including, but not limited to, any of the following:

(1) Allow the person with a disability reasonable periods of relief from examination and cross-examination during which he or she may retire from the courtroom. The judge may also allow other witnesses in the proceeding to be examined when the person with a disability retires from the courtroom.

(2) Allow the person with a disability to utilize a support person pursuant to Section 868.5 or a regional center representative providing services to a developmentally disabled individual pursuant to Article 1 (commencing with Section 4620) or Article 2 (commencing with Section 4640) of Chapter 5 of Division 4.5 of the Welfare and Institutions Code. In addition to, or instead of, allowing the person with a disability to utilize a support person or regional center representative pursuant to this paragraph, the court may allow the person with a disability to utilize a person necessary to facilitate the communication or physical needs of the person with a disability.

(3) Notwithstanding Section 68119 of the Government Code, the judge may remove his or her robe if the judge believes that this formal

attire prevents full participation of the person with a disability because it is intimidating to him or her.

(4) The judge, parties, witnesses, support persons, and court personnel may be relocated within the courtroom to facilitate a more comfortable and personal environment for the person with a disability as well as accommodating any specific requirements for communication by that person.

(c) The prosecutor may apply for an order that the testimony of the person with a disability at the preliminary hearing, in addition to being stenographically recorded, be recorded and preserved on videotape.

(1) The application for the order shall be in writing and made three days prior to the preliminary hearing.

(2) Upon timely receipt of the application, the judge shall order that the testimony of the person with a disability given at the preliminary hearing be taken and preserved on videotape. The videotape shall be transmitted to the clerk of the court in which the action is pending.

(3) If at the time of trial the court finds that further testimony would cause the person with a disability emotional trauma so that he or she is medically unavailable or otherwise unavailable within the meaning of Section 240 of the Evidence Code, the court may admit the videotape of his or her testimony at the preliminary hearing as former testimony under Section 1291 of the Evidence Code.

(4) Any videotape that is taken pursuant to this subdivision is subject to a protective order of the court for the purpose of protecting the privacy of the person with a disability. This subdivision does not affect the provisions of subdivision (b) of Section 868.7.

(d) Notwithstanding any other law, the court in any criminal proceeding, upon written notice of the prosecutor made at least three days prior to the date of the preliminary hearing or trial date on which the testimony of the person with a disability is scheduled, or during the course of the proceeding on the court's own motion, may order that the testimony of the person with a disability be taken by contemporaneous examination and cross-examination in another place and out of the presence of the judge, jury, and defendant, and communicated to the courtroom by means of two-way closed-circuit television, if the court makes all of the following findings:

(1) The person with a disability will be called on to testify concerning facts of an alleged sexual offense, or other crime as specified in subdivision (b), committed on or with that person.

(2) The impact on the person with a disability of one or more of the factors enumerated in subparagraphs (A) to (D), inclusive, is shown by clear and convincing evidence to be so substantial as to make the person with a disability unavailable as a witness unless closed-circuit television is used. The refusal of the person with a disability to testify shall not

alone constitute sufficient evidence that the special procedure described in this subdivision is necessary in order to accommodate the disability. The court may take into consideration the relationship between the person with a disability and the defendant or defendants.

(A) Threats of serious bodily injury to be inflicted on the person with a disability or a family member, of incarceration, institutionalization, or deportation of the person with a disability or a family member, or of removal of the person with a disability from his or her residence by withholding needed services when the threats come from a service provider, in order to prevent or dissuade the person with a disability from attending or giving testimony at any trial or court proceeding or to prevent that person from reporting the alleged offense or from assisting in criminal prosecution.

(B) Use of a firearm or any other deadly weapon during the commission of the crime.

(C) Infliction of great bodily injury upon the person with a disability during the commission of the crime.

(D) Conduct on the part of the defendant or defense counsel during the hearing or trial that causes the person with a disability to be unable to continue his or her testimony.

(e) (1) The hearing on the motion brought pursuant to this subdivision shall be conducted out of the presence of the jury.

(2) Notwithstanding Section 804 of the Evidence Code or any other law, the court, in determining the merits of the motion, shall not compel the person with a disability to testify at the hearing; nor shall the court deny the motion on the ground that the person with a disability has not testified.

(3) In determining whether the impact on an individual person with a disability of one or more of the factors enumerated under paragraph (2) of subdivision (d) is so substantial that the person is unavailable as a witness unless the closed-circuit television procedure is employed, the court may question the person with a disability in chambers, or at some other comfortable place other than the courtroom, on the record for a reasonable period of time with the support person described under paragraph (2) of subdivision (b), the prosecutor, and defense counsel present. At this time the court shall explain the process to the person with a disability. The defendant or defendants shall not be present; however, the defendant or defendants shall have the opportunity to contemporaneously observe the proceedings by closed-circuit television. Defense counsel shall be afforded a reasonable opportunity to consult with the defendant or defendants prior to the conclusion of the session in chambers.

(f) When the court orders the testimony of a victim who is a person with a disability to be taken in another place outside of the courtroom, the court shall do all of the following:

(1) Make a brief statement on the record, outside of the presence of the jury, of the reasons in support of its order. While the statement need not include traditional findings of fact, the reasons shall be set forth with sufficient specificity to permit meaningful review and to demonstrate that discretion was exercised in a careful, reasonable, and equitable manner.

(2) Instruct the members of the jury that they are to draw no inferences from the use of closed-circuit television as a means of assuring the full participation of the victim who is a person with a disability by accommodating that individual's disability.

(3) Instruct respective counsel, outside of the presence of the jury, that they are to make no comment during the course of the trial on the use of closed-circuit television procedures.

(4) Instruct the support person, if the person is part of the court's accommodation of the disability, outside of the presence of the jury, that he or she is not to coach, cue, or in any way influence or attempt to influence the testimony of the person with a disability.

(5) Order that a complete record of the examination of the person with a disability, including the images and voices of all persons who in any way participate in the examination, be made and preserved on videotape in addition to being stenographically recorded. The videotape shall be transmitted to the clerk of the court in which the action is pending and shall be made available for viewing to the prosecuting attorney, the defendant, and his or her attorney, during ordinary business hours. The videotape shall be destroyed after five years have elapsed from the date of entry of judgment. If an appeal is filed, the tape shall not be destroyed until a final judgment on appeal has been ordered. Any videotape that is taken pursuant to this section is subject to a protective order of the court for the purpose of protecting the privacy of the person with a disability. This subdivision does not affect the provisions of subdivision (b) of Section 868.7.

(g) When the court orders the testimony of a victim who is a person with a disability to be taken in another place outside the courtroom, nothing in this section shall prohibit the court from ordering the victim to appear in the courtroom for a limited purpose, including the identification of the defendant or defendants as the court deems necessary.

(h) The examination shall be under oath, and the defendant shall be able to see and hear the person with a disability. If two-way closed-circuit television is used, the defendant's image shall be transmitted live to the person with a disability.

(i) Nothing in this section shall affect the disqualification of witnesses pursuant to Section 701 of the Evidence Code.

(j) The cost of examination by contemporaneous closed-circuit television ordered pursuant to this section shall be borne by the court out of its existing budget.

(k) This section shall not be construed to obviate the need to provide other accommodations necessary to ensure accessibility of courtrooms to persons with disabilities nor prescribe a lesser standard of accessibility or usability for persons with disabilities than that provided by Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 and following) and federal regulations adopted pursuant to that act.

(*l*) The Judicial Council shall report to the Legislature, no later than two years after the enactment of this subdivision, on the frequency of the use and effectiveness of admitting the videotape of testimony by means of closed-circuit television.

SEC. 17. Section 11166 of the Penal Code is amended to read:

11166. (a) Except as provided in subdivision (c), a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. The mandated reporter shall make a report to the agency immediately or as soon as is practicably possible by telephone, and the mandated reporter shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. The mandated reporter may include with the report any nonprivileged documentary evidence the mandated reporter possesses relating to the incident.

(1) For the purposes of this article, ''reasonable suspicion'' means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse or neglect. For the purpose of this article, the pregnancy of a minor does not, in and of itself, constitute a basis for a reasonable suspicion of sexual abuse.

(2) The agency shall be notified and a report shall be prepared and sent even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse was discovered during an autopsy.

(3) A report made by a mandated reporter pursuant to this section shall be known as a mandated report.

(b) Any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section

is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars ($1,000) or by both that fine and punishment. If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until an agency specified in Section 11165.9 discovers the offense.

(c) (1) A clergy member who acquires knowledge or a reasonable suspicion of child abuse or neglect during a penitential communication is not subject to subdivision (a). For the purposes of this subdivision, ''penitential communication'' means a communication, intended to be in confidence, including, but not limited to, a sacramental confession, made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.

(2) Nothing in this subdivision shall be construed to modify or limit a clergy member's duty to report known or suspected child abuse or neglect when the clergy member is acting in some other capacity that would otherwise make the clergy member a mandated reporter.

(3) (A) On or before January 1, 2004, a clergy member or any custodian of records for the clergy member may report to an agency specified in Section 11165.9 that the clergy member or any custodian of records for the clergy member, prior to January 1, 1997, in his or her professional capacity or within the scope of his or her employment, other than during a penitential communication, acquired knowledge or had a reasonable suspicion that a child had been the victim of sexual abuse that the clergy member or any custodian of records for the clergy member did not previously report the abuse to an agency specified in Section 11165.9. The provisions of Section 11172 shall apply to all reports made pursuant to this paragraph.

(B) This paragraph shall apply even if the victim of the known or suspected abuse has reached the age of majority by the time the required report is made.

(C) The local law enforcement agency shall have jurisdiction to investigate any report of child abuse made pursuant to this paragraph even if the report is made after the victim has reached the age of majority.

(d) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, videotape, negative, or slide depicting a child under the age of 16 years engaged in an act of sexual conduct, shall report the instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately,

or as soon as practicably possible, by telephone, and shall prepare and send a written report of it with a copy of the film, photograph, videotape, negative, or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, ''sexual conduct'' means any of the following:

(1) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals.

(2) Penetration of the vagina or rectum by any object.

(3) Masturbation for the purpose of sexual stimulation of the viewer.

(4) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.

(5) Exhibition of the genitals, pubic, or rectal areas of any person for the purpose of sexual stimulation of the viewer.

(e) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse or neglect may report the known or suspected instance of child abuse or neglect to an agency specified in Section 11165.9.

(f) When two or more persons, who are required to report, jointly have knowledge of a known or suspected instance of child abuse or neglect, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(g) (1) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit the reporting duties, and no person making a report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with this article.

(2) The internal procedures shall not require any employee required to make reports pursuant to this article to disclose his or her identity to the employer.

(3) Reporting the information regarding a case of possible child abuse or neglect to an employer, supervisor, school principal, school counselor, coworker, or other person shall not be a substitute for making a mandated report to an agency specified in Section 11165.9.

(h) A county probation or welfare department shall immediately, or as soon as practicably possible, report by telephone, fax, or electronic transmission to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child

abuse or neglect, as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare or probation department. A county probation or welfare department also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision.

(i) A law enforcement agency shall immediately, or as soon as practicably possible, report by telephone to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and to the district attorney's office every known or suspected instance of child abuse or neglect reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall be reported only to the county welfare or probation department. A law enforcement agency shall report to the county welfare or probation department every known or suspected instance of child abuse or neglect reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision.

SEC. 17.5. Section 11166 of the Penal Code is amended to read:

11166. (a) Except as provided in subdivision (c), a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. The mandated reporter shall make a report to the agency immediately or as soon as is practicably possible by telephone, and the mandated reporter shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. The mandated reporter may include with the report any nonprivileged documentary evidence the mandated reporter possesses relating to the incident.

(1) For the purposes of this article, ''reasonable suspicion'' means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position,

drawing, when appropriate, on his or her training and experience, to suspect child abuse or neglect. For the purpose of this article, the pregnancy of a minor does not, in and of itself, constitute a basis for a reasonable suspicion of sexual abuse.

(2) The agency shall be notified and a report shall be prepared and sent even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse was discovered during an autopsy.

(3) A mandated reporter shall not make a report if the mandated reporter has knowledge or suspects that an adult was a victim of abuse or neglect as a child, unless the mandated reporter knows or reasonably suspects that a child who is currently under 18 years of age is being, or has been, abused or neglected by the same individual that victimized the adult when the adult was a child, or unless the known or suspected child abuse or neglect took place in a facility licensed by the Community Care Licensing Division of the State Department of Social Services, in which case the incident shall be reported by the mandated reporter.

(4) A report made by a mandated reporter pursuant to this section shall be known as a mandated report.

(b) Any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars ($1,000) or by both that imprisonment and fine. If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until an agency specified in Section 11165.9 discovers the offense.

(c) (1) A clergy member who acquires knowledge or a reasonable suspicion of child abuse or neglect during a penitential communication is not subject to subdivision (a). For the purposes of this subdivision, ''penitential communication'' means a communication, intended to be in confidence, including, but not limited to, a sacramental confession, made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.

(2) Nothing in this subdivision shall be construed to modify or limit a clergy member's duty to report known or suspected child abuse or neglect when the clergy member is acting in some other capacity that would otherwise make the clergy member a mandated reporter.

(3) (A) On or before January 1, 2004, a clergy member or any custodian of records for the clergy member may report to an agency

specified in Section 11165.9 that the clergy member or any custodian of records for the clergy member, prior to January 1, 1997, in his or her professional capacity or within the scope of his or her employment, other than during a penitential communication, acquired knowledge or had a reasonable suspicion that a child had been the victim of sexual abuse that the clergy member or any custodian of records for the clergy member did not previously report the abuse to an agency specified in Section 11165.9. The provisions of Section 11172 shall apply to all reports made pursuant to this paragraph.

(B) This paragraph shall apply even if the victim of the known or suspected abuse has reached the age of majority by the time the required report is made.

(C) The local law enforcement agency shall have jurisdiction to investigate any report of child abuse made pursuant to this paragraph even if the report is made after the victim has reached the age of majority.

(d) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, videotape, negative, or slide depicting a child under the age of 16 years engaged in an act of sexual conduct, shall report the instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately, or as soon as practicably possible, by telephone, and shall prepare and send a written report of it with a copy of the film, photograph, videotape, negative, or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, ''sexual conduct'' means any of the following:

(1) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals.

(2) Penetration of the vagina or rectum by any object.

(3) Masturbation for the purpose of sexual stimulation of the viewer.

(4) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.

(5) Exhibition of the genitals, pubic, or rectal areas of any person for the purpose of sexual stimulation of the viewer.

(e) Any mandated reporter who knows or reasonably suspects that the home or institution in which a child resides is unsuitable for the child because of abuse or neglect of the child shall bring the condition to the attention of the agency to which, and at the same time as, he or she makes a report of the abuse or neglect pursuant to subdivision (a).

(f) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse or neglect may report the known or suspected instance of child abuse or neglect to an agency specified in Section 11165.9.

(g) When two or more persons, who are required to report, jointly have knowledge of a known or suspected instance of child abuse or neglect, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(h) (1) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit the reporting duties, and no person making a report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with this article.

(2) The internal procedures shall not require any employee required to make reports pursuant to this article to disclose his or her identity to the employer.

(3) Reporting the information regarding a case of possible child abuse or neglect to an employer, supervisor, school principal, school counselor, coworker, or other person shall not be a substitute for making a mandated report to an agency specified in Section 11165.9.

(i) A county probation or welfare department shall immediately, or as soon as practicably possible, report by telephone, fax, or electronic transmission to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse or neglect, as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare or probation department. A county probation or welfare department also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision.

(j) A law enforcement agency shall immediately, or as soon as practicably possible, report by telephone to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and to the district attorney's office every known or suspected instance of child abuse or neglect reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall be reported only to the county welfare or probation department. A law enforcement agency shall report to the county welfare or probation

department every known or suspected instance of child abuse or neglect reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision.

SEC. 18. Section 15610.63 of the Welfare and Institutions Code is amended to read:

15610.63. ''Physical abuse'' means any of the following:

(a) Assault, as defined in Section 240 of the Penal Code.

(b) Battery, as defined in Section 242 of the Penal Code.

(c) Assault with a deadly weapon or force likely to produce great bodily injury, as defined in Section 245 of the Penal Code.

(d) Unreasonable physical constraint, or prolonged or continual deprivation of food or water.

(e) Sexual assault, that means any of the following:

(1) Sexual battery, as defined in Section 243.4 of the Penal Code.

(2) Rape, as defined in Section 261 of the Penal Code.

(3) Rape in concert, as described in Section 264.1 of the Penal Code.

(4) Spousal rape, as defined in Section 262 of the Penal Code.

(5) Incest, as defined in Section 285 of the Penal Code.

(6) Sodomy, as defined in Section 286 of the Penal Code.

(7) Oral copulation, as defined in Section 288a of the Penal Code.

(8) Sexual penetration, as defined in Section 289 of the Penal Code.

(9) Lewd or lascivious acts as defined in paragraph (2) of subdivision (b) of Section 288 of the Penal Code.

(f) Use of a physical or chemical restraint or psychotropic medication under any of the following conditions:

(1) For punishment.

(2) For a period beyond that for which the medication was ordered pursuant to the instructions of a physician and surgeon licensed in the State of California, who is providing medical care to the elder or dependent adult at the time the instructions are given.

(3) For any purpose not authorized by the physician and surgeon.

SEC. 19. Section 15630 of the Welfare and Institutions Code is amended to read:

15630. (a) Any person who has assumed full or intermittent responsibility for care or custody of an elder or dependent adult, whether or not he or she receives compensation, including administrators, supervisors, and any licensed staff of a public or private facility that

provides care or services for elder or dependent adults, or any elder or dependent adult care custodian, health practitioner, clergy member, or employee of a county adult protective services agency or a local law enforcement agency, is a mandated reporter.

(b) (1) Any mandated reporter who, in his or her professional capacity, or within the scope of his or her employment, has observed or has knowledge of an incident that reasonably appears to be physical abuse, as defined in Section 15610.63 of the Welfare and Institutions Code, abandonment, abduction, isolation, financial abuse, or neglect, or is told by an elder or dependent adult that he or she has experienced behavior, including an act or omission, constituting physical abuse, as defined in Section 15610.63 of the Welfare and Institutions Code, abandonment, abduction, isolation, financial abuse, or neglect, or reasonably suspects that abuse, shall report the known or suspected instance of abuse by telephone immediately or as soon as practicably possible, and by written report sent within two working days, as follows:

(A) If the abuse has occurred in a long-term care facility, except a state mental health hospital or a state developmental center, the report shall be made to the local ombudsperson or the local law enforcement agency.

Except in an emergency, the local ombudsperson and the local law enforcement agency shall, as soon as practicable, do all of the following:

(i) Report to the State Department of Health Services any case of known or suspected abuse occurring in a long-term health care facility, as defined in subdivision (a) of Section 1418 of the Health and Safety Code.

(ii) Report to the State Department of Social Services any case of known or suspected abuse occurring in a residential care facility for the elderly, as defined in Section 1569.2 of the Health and Safety Code, or in an adult day care facility, as defined in paragraph (2) of subdivision (a) of Section 1502.

(iii) Report to the State Department of Health Services and the California Department of Aging any case of known or suspected abuse occurring in an adult day health care center, as defined in subdivision (b) of Section 1570.7 of the Health and Safety Code.

(iv) Report to the Bureau of Medi-Cal Fraud and Elder Abuse any case of known or suspected criminal activity.

(B) If the suspected or alleged abuse occurred in a state mental hospital or a state developmental center, the report shall be made to designated investigators of the State Department of Mental Health or the State Department of Developmental Services, or to the local law enforcement agency.

Except in an emergency, the local law enforcement agency shall, as soon as practicable, report any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse.

(C) If the abuse has occurred any place other than one described in subparagraph (A), the report shall be made to the adult protective services agency or the local law enforcement agency.

(2) (A) A mandated reporter who is a clergy member who acquires knowledge or reasonable suspicion of elder or dependent adult abuse during a penitential communication is not subject to paragraph (1). For purposes of this subdivision, ''penitential communication'' means a communication that is intended to be in confidence, including, but not limited to, a sacramental confession made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization is authorized or accustomed to hear those communications and under the discipline tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.

(B) Nothing in this subdivision shall be construed to modify or limit a clergy member's duty to report known or suspected elder and dependent adult abuse when he or she is acting in the capacity of a care custodian, health practitioner, or employee of an adult protective agency.

(C) Notwithstanding any other provision in this section, a clergy member who is not regularly employed on either a full-time or part-time basis in a long-term care facility or does not have care or custody of an elder or dependent adult shall not be responsible for reporting abuse or neglect that is not reasonably observable or discernible to a reasonably prudent person having no specialized training or experience in elder or dependent care.

(3) (A) A mandated reporter who is a physician and surgeon, a registered nurse, or a psychotherapist, as defined in Section 1010 of the Evidence Code, shall not be required to report, pursuant to paragraph (1), an incident where all of the following conditions exist:

(i) The mandated reporter has been told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, as defined in Section 15610.63 of the Welfare and Institutions Code, abandonment, abduction, isolation, financial abuse, or neglect.

(ii) The mandated reporter is not aware of any independent evidence that corroborates the statement that the abuse has occurred.

(iii) The elder or dependent adult has been diagnosed with a mental illness or dementia, or is the subject of a court-ordered conservatorship because of a mental illness or dementia.

(iv) In the exercise of clinical judgment, the physician and surgeon, the registered nurse, or the psychotherapist, as defined in Section 1010 of the Evidence Code, reasonably believes that the abuse did not occur.

(B) This paragraph shall not be construed to impose upon mandated reporters a duty to investigate a known or suspected incident of abuse

and shall not be construed to lessen or restrict any existing duty of mandated reporters.

(4) (A) In a long-term care facility, a mandated reporter shall not be required to report as a suspected incident of abuse, as defined in Section 15610.07, an incident where all of the following conditions exist:

(i) The mandated reporter is aware that there is a proper plan of care.

(ii) The mandated reporter is aware that the plan of care was properly provided or executed.

(iii) A physical, mental, or medical injury occurred as a result of care provided pursuant to clause (i) or (ii).

(iv) The mandated reporter reasonably believes that the injury was not the result of abuse.

(B) This paragraph shall not be construed to require a mandated reporter to seek, nor to preclude a mandated reporter from seeking, information regarding a known or suspected incident of abuse prior to reporting. This paragraph shall apply only to those categories of mandated reporters that the State Department of Health Services determines, upon approval by the Bureau of Medi-Cal Fraud and Elder Abuse and the state long-term care ombudsperson, have access to plans of care and have the training and experience necessary to determine whether the conditions specified in this section have been met.

(c) (1) Any mandated reporter who has knowledge, or reasonably suspects, that types of elder or dependent adult abuse for which reports are not mandated have been inflicted upon an elder or dependent adult, or that his or her emotional well-being is endangered in any other way, may report the known or suspected instance of abuse.

(2) If the suspected or alleged abuse occurred in a long-term care facility other than a state mental health hospital or a state developmental center, the report may be made to the long-term care ombudsperson program. Except in an emergency, the local ombudsperson shall report any case of known or suspected abuse to the State Department of Health Services and any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse, as soon as is practicable.

(3) If the suspected or alleged abuse occurred in a state mental health hospital or a state developmental center, the report may be made to the designated investigator of the State Department of Mental Health or the State Department of Developmental Services or to a local law enforcement agency or to the local ombudsperson. Except in an emergency, the local ombudsperson and the local law enforcement agency shall report any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse, as soon as is practicable.

(4) If the suspected or alleged abuse occurred in a place other than a place described in paragraph (2) or (3), the report may be made to the county adult protective services agency.

(5) If the conduct involves criminal activity not covered in subdivision (b), it may be immediately reported to the appropriate law enforcement agency.

(d) When two or more mandated reporters are present and jointly have knowledge or reasonably suspect that types of abuse of an elder or a dependent adult for which a report is or is not mandated have occurred, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement, and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(e) A telephone report of a known or suspected instance of elder or dependent adult abuse shall include, if known, the name of the person making the report, the name and age of the elder or dependent adult, the present location of the elder or dependent adult, the names and addresses of family members or any other adult responsible for the elder or dependent adult's care, the nature and extent of the elder or dependent adult's condition, the date of the incident, and any other information, including information that led that person to suspect elder or dependent adult abuse, as requested by the agency receiving the report.

(f) The reporting duties under this section are individual, and no supervisor or administrator shall impede or inhibit the reporting duties, and no person making the report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting, ensure confidentiality, and apprise supervisors and administrators of reports may be established, provided they are not inconsistent with this chapter.

(g) (1) Whenever this section requires a county adult protective services agency to report to a law enforcement agency, the law enforcement agency shall, immediately upon request, provide a copy of its investigative report concerning the reported matter to that county adult protective services agency.

(2) Whenever this section requires a law enforcement agency to report to a county adult protective services agency, the county adult protective services agency shall, immediately upon request, provide to that law enforcement agency a copy of its investigative report concerning the reported matter.

(3) The requirement to disclose investigative reports pursuant to this subdivision shall not include the disclosure of social services records or case files that are confidential, nor shall this subdivision be construed to allow disclosure of any reports or records if the disclosure would be prohibited by any other provision of state or federal law.

(h) Failure to report physical abuse, as defined in Section 15610.63 of the Welfare and Institutions Code, abandonment, abduction,

isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this section, is a misdemeanor, punishable by not more than six months in the county jail, by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment. Any mandated reporter who willfully fails to report physical abuse, as defined in Section 15610.63 of the Welfare and Institutions Code, abandonment, abduction, isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this section, where that abuse results in death or great bodily injury, 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 that fine and imprisonment. If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until a law enforcement agency specified in paragraph (1) of subdivision (b) of Section 15630 of the Welfare and Institutions Code discovers the offense.

(i) For purposes of this section, ''dependent adult'' shall have the same meaning as in Section 15610.23.

SEC. 20. Section 6.5 of this bill incorporates amendments to Section 1109 of the Evidence Code proposed by both this bill and AB 141. 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 1109 of the Evidence Code, and (3) this bill is enacted after AB 141, in which case Section 6 of this bill shall not become operative.

SEC. 21. Section 17.5 of this bill incorporates amendments to Section 11166 of the Penal Code proposed by both this bill and SB 1313. 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 11166 of the Penal Code, and (3) this bill is enacted after SB 1313, in which case Section 17 of this bill shall not become operative.

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

CHAPTER 824

An act to amend Sections 15819.60 and 15819.65 of the Government Code, and to 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 September 28, 2004. Filed with Secretary of State September 28, 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 acquire, design, equip, construct, and establish additional veterans' homes to be located in Lancaster, Saticoy, West Los Angeles, 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 in the amount of one hundred sixty-two million dollars ($162,000,000) pursuant to Chapter 5 (commencing with Section 15830) to finance the acquisition, design, construction, establishment, equipping, renovation, or expansion of the veterans' homes specified in Section 15819.60.

(2) This amount shall be available, in addition to any federal funds or other state funds available for the acquisition, design, construction, establishment, equipping, renovation, or expansion of the veterans' homes specified in Section 15819.60.

(3) 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) Notwithstanding Section 13340, funds derived from the financing methods pursuant to Chapter 5 (commencing with Section 15830) for the veterans' homes specified in Section 15819.60 are hereby continuously appropriated to the board on behalf of the Department of Veterans Affairs for the acquisition, design, construction, establishment, 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 of the veterans' homes specified in Section 15819.60.

(c) 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 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.

(d) 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.

(e) 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.

(f) The board shall not itself be deemed a lead or responsible agency for purposes of the California Environmental Quality Act (Division 12 (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 this 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 1104.2 of the Military and Veterans Code 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.

(e) The Department of Veterans Affairs, shall prepare and submit a report to the Legislature and Governor semiannually, beginning on March 1, 2005, on the progress of the acquisition, design, equipping, construction, establishment, and expansion of the veterans' homes specified in Section 15819.60 of the Government Code, including updated cost estimates.

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 equip, design, and construct various veterans' homes at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 825

An act to amend Sections 1368.2, 1746, and 1749 of the Health and Safety Code, relating to health facilities.

[Approved by Governor September 28, 2004. Filed with Secretary of State September 28, 2004.]

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

SECTION 1. Section 1368.2 of the Health and Safety Code is amended to read:

1368.2. (a) On and after January 1, 2002, every group health care service plan contract, except a specialized health care service plan contract, which is issued, amended, or renewed, shall include a provision for hospice care.

(b) The hospice care shall at a minimum be equivalent to hospice care provided by the federal Medicare program pursuant to Title XVIII of the Social Security Act.

(c) The hospice care provided under this section is not required to include preliminary services set forth in subdivision (d) of Section 1749. However, an enrollee who receives those preliminary services shall remain eligible for coverage of curative treatment by a health care service plan during the course of preliminary services and prior to the election of hospice services.

(d) The following are applicable to this section and to paragraph (7) of subdivision (b) of Section 1345:

(1) The definitions in Section 1746, except for subdivisions (o) and (p) of that section.

(2) The ''federal regulations'' which means the regulations adopted for hospice care under Title XVIII of the Social Security Act in Title 42 of the Code of Federal Regulations, Chapter IV, Part 418, except Subparts A, B, G, and H, and any amendments or successor provisions thereto.

(e) The director no later than January 1, 2001, shall adopt regulations to implement this section. The regulations shall meet all of the following requirements:

(1) Be consistent with all material elements of the federal regulations that are not by their terms applicable only to eligible Medicare beneficiaries. If there is a conflict between a federal regulation and any state regulation, other than those adopted pursuant to this section, the director shall adopt the regulation that is most favorable for plan subscribers, members or enrollees to receive hospice care.

(2) Be consistent with any other applicable federal or state laws.

(3) Be consistent with the definitions of Section 1746, except for subdivisions (o) and (p) of that section.

(f) This section is not applicable to the subscribers, members, or enrollees of a health care service plan who elect to receive hospice care under the Medicare program.

(g) The director, commencing on January 15, 2002, and on each January 15th thereafter, shall report to the Advisory Committee on Managed Health Care any changes in the federal regulations that differ materially from the regulations then in effect for this section. The director shall include with the report written text for proposed changes to the regulations then in effect for this section needed to meet the requirements of subdivision (e).

SEC. 2. Section 1746 of the Health and Safety Code is amended to read:

1746. For the purposes of this chapter, the following definitions apply:

(a) ''Bereavement services'' means those services available to the surviving family members for a period of at least one year after the death of the patient, including an assessment of the needs of the bereaved family and the development of a care plan that meets these needs, both prior to and following the death of the patient.

(b) ''Hospice'' means a specialized form of interdisciplinary health care that is designed to provide palliative care, alleviate the physical, emotional, social, and spiritual discomforts of an individual who is experiencing the last phases of life due to the existence of a terminal disease, and provide supportive care to the primary caregiver and the family of the hospice patient, and that meets all of the following criteria:

(1) Considers the patient and the patient's family, in addition to the patient, as the unit of care.

(2) Utilizes an interdisciplinary team to assess the physical, medical, psychological, social, and spiritual needs of the patient and the patient's family.

(3) Requires the interdisciplinary team to develop an overall plan of care and to provide coordinated care that emphasizes supportive

services, including, but not limited to, home care, pain control, and limited inpatient services. Limited inpatient services are intended to ensure both continuity of care and appropriateness of services for those patients who cannot be managed at home because of acute complications or the temporary absence of a capable primary caregiver.

(4) Provides for the palliative medical treatment of pain and other symptoms associated with a terminal disease, but does not provide for efforts to cure the disease.

(5) Provides for bereavement services following death to assist the family in coping with social and emotional needs associated with the death of the patient.

(6) Actively utilizes volunteers in the delivery of hospice services.

(7) To the extent appropriate, based on the medical needs of the patient, provides services in the patient's home or primary place of residence.

(c) ''Inpatient care arrangements'' means arranging for those short inpatient stays that may become necessary to manage acute symptoms or because of the temporary absence, or need for respite, of a capable primary caregiver. The hospice shall arrange for these stays, ensuring both continuity of care and the appropriateness of services.

(d) ''Medical direction'' means those services provided by a licensed physician and surgeon who is charged with the responsibility of acting as a consultant to the interdisciplinary team, a consultant to the patient's attending physician and surgeon, as requested, with regard to pain and symptom management, and a liaison with physicians and surgeons in the community.

(e) ''An interdisciplinary team'' means the hospice care team that includes, but is not limited to, the patient and patient's family, a physician and surgeon, a registered nurse, a social worker, a volunteer, and a spiritual caregiver. The team shall be coordinated by a registered nurse and shall be under medical direction. The team shall meet regularly to develop and maintain an appropriate plan of care.

(f) ''Plan of care'' means a written plan developed by the attending physician and surgeon, the medical director or physician and surgeon designee, and the interdisciplinary team that addresses the needs of a patient and family admitted to the hospice program. The hospice shall retain overall responsibility for the development and maintenance of the plan of care and quality of services delivered.

(g) ''Skilled nursing services'' means nursing services provided by or under the supervision of a registered nurse under a plan of care developed by the interdisciplinary team and the patient's physician and surgeon to a patient and his or her family that pertain to the palliative, supportive services required by patients with a terminal illness. Skilled nursing services include, but are not limited to, patient assessment, evaluation

and case management of the medical nursing needs of the patient, the performance of prescribed medical treatment for pain and symptom control, the provision of emotional support to both the patient and his or her family, and the instruction of caregivers in providing personal care to the patient. Skilled nursing services shall provide for the continuity of services for the patient and his or her family. Skilled nursing services shall be available on a 24-hour on-call basis.

(h) ''Social services/counseling services'' means those counseling and spiritual care services that assist the patient and his or her family to minimize stresses and problems that arise from social, economic, psychological, or spiritual needs by utilizing appropriate community resources, and maximize positive aspects and opportunities for growth.

(i) ''Terminal disease'' or ''terminal illness'' means a medical condition resulting in a prognosis of life of one year or less, if the disease follows its natural course.

(j) ''Volunteer services'' means those services provided by trained hospice volunteers who have agreed to provide service under the direction of a hospice staff member who has been designated by the hospice to provide direction to hospice volunteers. Hospice volunteers may be used to provide support and companionship to the patient and his or her family during the remaining days of the patient's life and to the surviving family following the patient's death.

(k) ''Multiple location'' means a location or site from which a hospice makes available basic hospice services within the service area of the parent agency. A multiple location shares administration, supervision, policies and procedures, and services with the parent agency in a manner that renders it unnecessary for the site to independently meet the licensing requirements.

(*l*) ''Home health aide'' has the same meaning as set forth in subdivision (c) of Section 1727.

(m) ''Home health aide services'' means those services described in subdivision (d) of Section 1727 that provide for the personal care of the terminally ill patient and the performance of related tasks in the patient's home in accordance with the plan of care in order to increase the level of comfort and to maintain personal hygiene and a safe, healthy environment for the patient.

(n) ''Parent agency'' means the part of the hospice that is licensed pursuant to this chapter and that develops and maintains administrative controls of multiple locations. All services provided by the multiple locations and parent agency are the responsibility of the parent agency.

(o) ''Palliative'' refers to medical treatment, interdisciplinary care, or consultation provided to the patient or family members, or both, that have as its primary purposes preventing or relieving suffering and enhancing the quality of life, rather than curing the disease, as described

in subdivision (b) of Section 1339.31, of a patient who has an end-stage medical condition.

(p) ''Preliminary services'' means those services authorized pursuant to subdivision (d) of Section 1749.

SEC. 3. Section 1749 of the Health and Safety Code is amended to read:

1749. (a) To qualify for a license under this chapter, an applicant shall satisfy all of the following:

(1) Be of good moral character. If the applicant is a franchise, franchisee, firm, association, organization, partnership, business trust, corporation, company, political subdivision of the state, or governmental agency, the person in charge of the hospice for which the application for a license is made shall be of good moral character.

(2) Demonstrate the ability of the applicant to comply with this chapter and any rules and regulations promulgated under this chapter by the state department.

(3) File a completed application with the state department that was prescribed and furnished pursuant to Section 1748.

(b) In order for a person, political subdivision of the state, or other governmental agency to be licensed as a hospice it shall satisfy the definition of a hospice contained in Section 1746, and also provide, or make provision for, the following basic services:

(1) Skilled nursing services.

(2) Social services/counseling services.

(3) Medical direction.

(4) Bereavement services.

(5) Volunteer services.

(6) Inpatient care arrangements.

(7) Home health aide services.

(c) The services required to be provided pursuant to subdivision (b) shall be provided in compliance with the ''Standards for Quality Hospice Care, 2003,'' as available from the California Hospice and Palliative Care Association, until the state department adopts regulations establishing alternative standards pursuant to subdivision (e).

(d) (1) Notwithstanding any provision of law to the contrary, to meet the unique needs of the community, licensed hospices may provide, in addition to hospice services authorized in this chapter, any of the following preliminary services for any person in need of those services, as determined by the physician and surgeon, if any, in charge of the care of a patient, or at the request of the patient or family:

(A) Preliminary palliative care consultations.

(B) Preliminary counseling and care planning.

(C) Preliminary grief and bereavement services.

(2) Preliminary services authorized pursuant to this subdivision may be provided concurrently with curative treatment to a person who does not have a terminal prognosis or who has not elected to receive hospice services only by licensed and certified hospices. These services shall be subject to the schedule of benefits under the Medi-Cal program, pursuant to subdivision (w) of Section 14132 of the Welfare and Institutions Code.

(e) The state department may adopt regulations establishing standards for any or all of the services required to be provided under subdivision (b). The regulations of the state department adopted pursuant to this subdivision shall supersede the standards referenced in subdivision (c) to the extent the regulations duplicate or replace those standards.

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 826

An act to add Section 12304.4 to the Welfare and Institutions Code, relating to in-home supportive services.

[Approved by Governor September 28, 2004. Filed with Secretary of State September 28, 2004.]

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

SECTION 1. Section 12304.4 is added to the Welfare and Institutions Code, to read:

12304.4. (a) Notwithstanding any other provision of law, a person entitled to the receipt of direct payment as an individual provider pursuant to Section 12302.2 for providing in-home supportive services may authorize payment 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 by the Controller.

(b) The Controller and the department shall determine the cost of developing and implementing the direct deposit program identified in

subdivision (a) and shall collect the cost from a nongovernmental third-party contractor or the organization, entity, or individual requesting payment in order to utilize the direct deposit program.

CHAPTER 827

An act to amend Sections 976.5, 976.8, 977, 982, 1036, and 1052 of, and to add Sections 336, 1061, 1145, and 2101.6 to, the Unemployment Insurance Code, relating to unemployment insurance, and making an appropriation therefor.

[Approved by Governor September 28, 2004. Filed with Secretary of State September 28, 2004.]

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

SECTION 1. Section 336 is added to the Unemployment Insurance Code, to read:

336. The director shall establish procedures to identify the transfer or acquisition of a business that is undertaken for purposes of obtaining a lower unemployment insurance contribution rate.

SEC. 2. Section 976.5 of the Unemployment Insurance Code is amended to read:

976.5. (a) Except as provided in subdivision (b), in addition to other contributions required by this division, every employer, except an employer to which subdivision (c) is applicable, may submit a voluntary unemployment insurance contribution for the purpose of redetermining its unemployment insurance contribution rate. No redetermination of a contribution rate shall be made unless the voluntary contribution is submitted as required in subdivision (c) of Section 1110. No redetermination shall reduce an employer's unemployment insurance contribution rate by more than three rates as provided in Section 977.

(b) This section shall not be operative in calendar years in which Contribution Rate Schedules E and F in Section 977 are in effect, or in calendar years to which the emergency solvency surcharge provided in Section 977.5 is in effect.

(c) This section does not apply to any of the following:

(1) An employer not eligible for a contribution rate other than that provided pursuant to Section 982 or subdivision (c) of Section 977.

(2) An employer with a negative reserve account balance on the computation date.

(3) An employer who was notified prior to September 1 of any unpaid amount owed to the department which is not the subject of a timely

petition for reassessment pending before the appeals board on September 30 preceding the year to which a contribution rate is applicable.

SEC. 3. Section 976.8 of the Unemployment Insurance Code is amended to read:

976.8. (a) Section 976.6 does not apply to any employer who has a negative reserve account balance on the computation date.

(b) Subdivision (a) does not apply to an employer assigned the maximum rate pursuant to subdivision (c) of Section 977.

SEC. 4. Section 977 of the Unemployment Insurance Code is amended to read:

977. (a) Except as provided in subdivision (c), if, as of the computation date, the employer's net balance of reserve equals or exceeds that percentage of his or her average base payroll which appears on any line in column 1 of the following table, but is less than that percentage of his or her average base payroll which appears on the same line in column 2 of that table, his or her contribution rate shall be the figure appearing on that same line in the appropriate schedule, as defined in subdivision (b), which shall be a percentage of the wages specified in Section 930.

	Reserve Ratio		Contribution Rate						
	Column	Column	Schedules						
Line	1	2	AA	A	B	C	D	E	F
01	less than –20		5.4	5.4	5.4	5.4	5.4	5.4	5.4
02	–20 to –18		5.2	5.3	5.4	5.4	5.4	5.4	5.4
03	–18 to –16		5.1	5.2	5.4	5.4	5.4	5.4	5.4
04	–16 to –14		5.0	5.1	5.3	5.4	5.4	5.4	5.4
05	–14 to –12		4.9	5.0	5.3	5.4	5.4	5.4	5.4
06	–12 to –11		4.8	4.9	5.2	5.4	5.4	5.4	5.4
07	–11 to –10		4.7	4.8	5.1	5.3	5.4	5.4	5.4
08	–10 to –09		4.6	4.7	5.1	5.3	5.4	5.4	5.4
09	–09 to –08		4.5	4.6	4.9	5.2	5.4	5.4	5.4
10	–08 to –07		4.4	4.5	4.8	5.1	5.3	5.4	5.4
11	–07 to –06		4.3	4.4	4.7	5.0	5.3	5.4	5.4
12	–06 to –05		4.2	4.3	4.6	4.9	5.2	5.4	5.4
13	–05 to –04		4.1	4.2	4.5	4.8	5.1	5.3	5.4
14	–04 to –03		4.0	4.1	4.4	4.7	5.0	5.3	5.4
15	–03 to –02		3.9	4.0	4.3	4.6	4.9	5.2	5.4
16	–02 to –01		3.8	3.9	4.2	4.5	4.8	5.1	5.4
17	–01 to 00		3.7	3.8	4.1	4.4	4.7	5.0	5.4
18	00 to 01		3.4	3.6	3.9	4.2	4.5	4.8	5.1
19	01 to 02		3.2	3.4	3.7	4.0	4.3	4.6	4.9
20	02 to 03		3.0	3.2	3.5	3.8	4.1	4.4	4.7

21	03 to 04	2.8	3.0	3.3	3.6	3.9	4.2	4.5
22	04 to 05	2.6	2.8	3.1	3.4	3.7	4.0	4.3
23	05 to 06	2.4	2.6	2.9	3.2	3.5	3.8	4.1
24	06 to 07	2.2	2.4	2.7	3.0	3.3	3.6	3.9
25	07 to 08	2.0	2.2	2.5	2.8	3.1	3.4	3.7
26	08 to 09	1.8	2.0	2.3	2.6	2.9	3.2	3.5
27	09 to 10	1.6	1.8	2.1	2.4	2.7	3.0	3.3
28	10 to 11	1.4	1.6	1.9	2.2	2.5	2.8	3.1
29	11 to 12	1.2	1.4	1.7	2.0	2.3	2.6	2.9
30	12 to 13	1.0	1.2	1.5	1.8	2.1	2.4	2.7
31	13 to 14	0.8	1.0	1.3	1.6	1.9	2.2	2.5
32	14 to 15	0.7	0.9	1.1	1.4	1.7	2.0	2.3
33	15 to 16	0.6	0.8	1.0	1.2	1.5	1.8	2.1
34	16 to 17	0.5	0.7	0.9	1.1	1.3	1.6	1.9
35	17 to 18	0.4	0.6	0.8	1.0	1.2	1.4	1.7
36	18 to 19	0.3	0.5	0.7	0.9	1.1	1.3	1.5
37	19 to 20	0.2	0.4	0.6	0.8	1.0	1.2	1.4
38	20 or more	0.1	0.3	0.5	0.7	0.9	1.1	1.3

(b) (1) Whenever the balance in the Unemployment Fund on September 30 of any calendar year is greater than 1.8 percent of the wages (as defined by Section 940) in employment subject to this part paid during the 12-month period ending upon the computation date, employers shall pay into the Unemployment Fund contributions for the succeeding calendar year upon all wages with respect to employment at the rates specified in Schedule AA.

(2) Whenever the balance in the Unemployment Fund on September 30 of any calendar year is equal to or less than 1.8 percent and greater than 1.6 percent of the wages (as defined by Section 940) in employment subject to this part paid during the 12-month period ending upon the computation date, employers shall pay into the Unemployment Fund contributions for the succeeding calendar year upon all wages with respect to employment at the rates specified in Schedule A.

(3) Whenever the balance in the Unemployment Fund on September 30 of any calendar year is equal to or less than 1.6 percent and greater than 1.4 percent of the wages (as defined by Section 940) in employment subject to this part paid during the 12-month period ending upon the computation date, employers shall pay into the Unemployment Fund contributions for the succeeding calendar year upon all wages with respect to employment at the rates specified in Schedule B.

(4) Whenever the balance in the Unemployment Fund on September 30 of any calendar year is equal to or less than 1.4 percent and greater than 1.2 percent of the wages (as defined by Section 940) in employment subject to this part paid during the 12-month period ending upon the computation date, employers shall pay into the Unemployment Fund

contributions for the succeeding calendar year upon all wages with respect to employment at the rates specified in Schedule C.

(5) Whenever the balance in the Unemployment Fund on September 30 of any calendar year is equal to or less than 1.2 percent and greater than 1.0 percent of the wages (as defined by Section 940) in employment subject to this part paid during the 12-month period ending upon the computation date, employers shall pay into the Unemployment Fund contributions for the succeeding calendar year upon all wages with respect to employment at the rates specified in Schedule D.

(6) Whenever the balance in the Unemployment Fund on September 30 of any calendar year is equal to or less than 1.0 percent and greater than or equal to 0.8 percent of the wages (as defined by Section 940) in employment subject to this part paid during the 12-month period ending upon the computation date, employers shall pay into the Unemployment Fund contributions for the succeeding calendar year upon all wages with respect to employment at the rates specified in Schedule E.

(7) Whenever the balance in the Unemployment Fund on September 30 of any calendar year is less than 0.8 percent and greater than or equal to 0.6 percent of the wages (as defined by Section 940) in employment subject to this part paid during the 12-month period ending upon the computation date, employers shall pay into the Unemployment Fund contributions for the succeeding calendar year upon all wages with respect to employment at the rates specified in Schedule F.

(c) For each rating period beginning on or after January 1, 2005, in which an employer obtains or attempts to obtain a more favorable rate of contributions under this section due to deliberate ignorance, reckless disregard, fraud, intent to evade, misrepresentation, or willful nondisclosure, the director shall assign the maximum contribution rate plus 2 percent for each applicable rating period, the current rating period, and the subsequent rating period.

SEC. 5. Section 982 of the Unemployment Insurance Code is amended to read:

982. (a) Except as provided in subdivision (b), no employer shall be eligible for a contribution rate of more or less than 3.4 percent for any rating period unless his or her reserve account has been subject to benefit charges during the period of 12 complete consecutive calendar quarters ending on the computation date for that rating period and he or she is qualified under Sections 977 and 977.5.

(b) No new employer shall be eligible for a contribution rate of more or less than 3.4 percent unless his or her reserve account has been subject to benefit charges during the period of 12 complete consecutive calendar months ending on the computation date and the new employer is qualified under Sections 977 and 977.5.

(c) For the purposes of this section ''new employer'' means any of the following:

(1) An employer who first qualifies as an employer after the 1969 calendar year, and whose account is continuously subject to benefit charges from the date of first chargeability, except that a successor employer under Section 1051 is not a new employer if the successor applies for or obtains the transfer of the reserve account or part thereof of a predecessor who is not a new employer.

(2) An employer whose entire reserve account has been transferred to a successor under Article 5 (commencing with Section 1051) of Chapter 4 of this part.

(3) An employer whose reserve account has been canceled pursuant to Section 1029.

(d) Section 905 applies to a new employer, except that for the purposes of this section ''average base payroll'' means:

(1) The payroll in the calendar year immediately preceding the computation date for a new employer with a payroll only in that calendar year.

(2) The quotient obtained by dividing by two the total amount of taxable wages paid by a new employer during the most recent period of two consecutive calendar years immediately preceding the computation date, for a new employer with a payroll only in each of, or only in the first of, the two consecutive calendar years.

(e) The contribution rate of an employer, for any period prior to January 1, 1988, shall not be changed, other than by the provisions of Sections 977 and 977.5, when the director makes a determination, pursuant to Section 135.1 or 135.2, because of arrangements entered into or business activities conducted between January 1, 1984, and January 1, 1986.

(f) This section does not apply to an employer assigned the maximum rate pursuant to subdivision (c) of Section 977.

SEC. 6. Section 1036 of the Unemployment Insurance Code is amended to read:

1036. (a) The director shall give notice, pursuant to Section 1206, to the employer of the correction of any error which the director finds in any statement of account or statement of charges. Except in the case where fraud, intent to evade, misrepresentation, or willful nondisclosure is found, the notice of correction shall be issued prior to the expiration of the rating period to which a statement relates.

(b) Any additional amount of contributions resulting from an increased contribution rate caused by the correction of any error that the director finds in any statement of reserve account or statement of charges shall be assessed within 180 days from the postmarked date of the notice of correction. These assessments shall be issued in accordance with

Article 8 (commencing with Section 1126). However, these assessments shall become final on the last day of the calendar month following the calendar quarter in which the assessment is issued.

(c) Any overpaid amount of contributions resulting from a reduced rate caused by the correction of an error that the director finds on any statement of reserve account or statement of charges shall be refunded within 180 days of the postmarked date of the notice of correction. These refunds shall be issued in accordance with Article 9 (commencing with Section 1176).

SEC. 7. Section 1052 of the Unemployment Insurance Code is amended to read:

1052. Upon receipt of the application the separate account, actual contribution and benefit experience and payrolls of the predecessor or that part thereof, as determined by authorized regulations, which pertains to the organization, trade, or business, or portion thereof acquired, shall be transferred to the successor employer for the purpose of determining its rate of contribution after such acquisition with the same effect for such purpose as if the operations of the predecessor had at all times been carried on by the successor. Such separate account shall be transferred by the director to the successor employer and, as of the date of the acquisition, shall become the separate account or part of the separate account, as the case may be, of the successor employer, and the benefits thereafter chargeable to the predecessor employer on account of employment relating to the transferred organization, trade, or business or transferred portion thereof prior to the date of the acquisition shall be charged to the separate account. This section shall not apply to any acquisition which is determined by the director to have been made for the purpose of obtaining a more favorable rate of contributions under Section 977.

SEC. 8. Section 1061 is added to the Unemployment Insurance Code, to read:

1061. (a) For purposes of this article, the reserve account attributable to a transferred business shall also be transferred to, and combined with, the reserve account attributable to the employer to whom that business is transferred, if both of the following are satisfied:

(1) An employer transfers all or part of its business or payroll to another employer.

(2) At the time of transfer, both employers are under common ownership, management, or control.

(b) This section shall be applied to meet the minimum requirements contained in any guidance or regulations issued by the United States Department of Labor.

SEC. 9. Section 1145 is added to the Unemployment Insurance Code, to read:

1145. (a) If the director finds that a person or business entity knowingly advises another person or business entity to violate any provision of this chapter, the director may assess the greater of:

(1) A penalty of five thousand dollars ($5,000).

(2) Ten percent of the combined amount of any resulting underreporting of contribution, penalties, or interest required by law.

(b) For purposes of this section, ''business entity'' means a partnership, corporation, association, limited liability company, or Indian tribe, as described in subsection (u) of Section 3306 of Title 26 of the United States Code, or any other legal entity.

SEC. 10. Section 2101.6 is added to the Unemployment Insurance Code, to read:

2101.6. (a) It is a violation of this chapter for any person to procure, counsel, advise, or coerce anyone to willfully make a false statement or representation, or to knowingly fail to disclose a material fact in order to lower or avoid any contribution or to avoid being or remaining subject to this division.

(b) It is a violation of this chapter for any person to willfully aid or assist anyone in making a false statement or representation, or in knowingly failing to disclose a material fact, in order to lower or avoid any contribution, or to avoid being or remaining subject to this division.

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 828

An act to amend Section 1231 of the Unemployment Insurance Code, relating to employment.

[Approved by Governor September 28, 2004. Filed with Secretary of State September 28, 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) A vibrant and growing small business sector is critical to creating jobs in a dynamic economy.

(2) The complexity and lack of clarity of many regulations put small businesses, which do not have the resources to hire experts to assist them, at a distinct disadvantage.

(3) The failure to recognize differences in the scale and resources of regulated businesses can adversely affect competition in the marketplace, discourage innovation, and restrict improvements in productivity.

(4) The practice of treating all regulated businesses as equivalent may lead to inefficient use of regulatory agency resources, enforcement problems, and, in some cases, to actions inconsistent with the legislative intent of health, safety, environmental, and economic welfare legislation.

(5) Alternative regulatory approaches that do not conflict with the stated objective of applicable statutes may be available to minimize the significant economic impact of rules on small business.

(6) It is the intent of the Legislature to study data collected by the Employment Development Department in order to assess the impact existing regulations have on the ability of small businesses and microbusinesses to effectively conduct business in California and protect workers in California.

(7) It is further the intent of the Legislature to benefit small business by clarifying the Employment Development Department's development and implementation of taxpayer education programs that provide taxpayers with a better understanding of complicated procedures and regulations.

(b) For the period from January 1, 2005, to December 1, 2005, the Employment Development Department shall collect data on the following, taken from a random sampling of 20 percent of the total amount of claims for unemployment insurance or disability insurance benefits submitted by owners of small businesses, as defined in paragraph (1) of subdivision (d) of Section 14837 of the Government Code:

(1) The total number of times, in the course of processing a claim for unemployment insurance or disability insurance benefits, that an owner of a small business objected to the department's determination that a worker was an employee.

(2) The total number of times, in the course of processing a claim for unemployment insurance or disability insurance benefits, that an owner of a small business was determined by the department not to be the employer of a worker.

(3) The length of time that the department took to make a final determination in each case described in paragraph (1) or (2).

(c) The department shall report its findings and any recommendations to the Legislature no later than July 1, 2006.

(d) The department shall conduct the study and report required by this act with existing resources of the department.

SEC. 2. Section 1231 of the Unemployment Insurance Code is amended to read:

1231. (a) The department shall develop and implement a taxpayer education and information program directed at, but not limited to, the following:

(1) Taxpayer or industry groups.

(2) Department audit and compliance staff.

(3) (A) Identifying forms, procedures, regulations, or laws that are confusing and lead to taxpayer errors.

(B) Taking appropriate action, including recommending remedial legislation to change those items identified pursuant to subparagraph (A).

(b) The education and information program described in subdivision (a) shall include all of the following:

(1) Communication with the taxpayer or industry groups which explains in simplified terms the most common errors made by taxpayers and how those errors may be avoided or corrected.

(2) Participation in small business seminars and similar programs organized by state and local agencies and may include participation in seminars organized by private organizations.

(3) In cooperation with the small business community, development of small business educational events and materials that explain, in simplified terms, the process of the department's determination of whether an individual is an employee or an independent contractor. These events and materials shall be designed to address potential tax and labor law issues that may arise when small businesses contract with microbusinesses in the production and delivery of products and services.

(4) Revision of taxpayer educational materials currently produced by the department to explain in simplified terms the most common errors made by taxpayers and how those errors may be avoided or corrected.

(5) Implementation of a continuing education program for audit personnel to include the application of new legislation to taxpayer activities and to minimize recurrent taxpayer noncompliance or inconsistency of administration.

CHAPTER 829

An act to amend Sections 20584 and 20602 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 28, 2004. Filed with Secretary of State September 28, 2004.]

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

SECTION 1. Section 20584 of the Revenue and Taxation Code is amended to read:

20584. (a) ''Property taxes'' means all ad valorem property taxes, special assessments, and other charges or user fees which are attributable to the residential dwelling on the county tax bill and the ad valorem property taxes, special assessments, or other charges or user fees appearing on the tax bill of any chartered city which levies and collects its own property taxes.

(b) Whenever a residential dwelling is an integral part of a larger tax unit, such as a duplex, farm or a multipurpose building, ''property taxes'' shall be the percentage of the total property taxes as the value of the residential dwelling is of the value of the total tax unit.

(c) ''Property taxes'' includes any property taxes that become delinquent after the claimant was 62 years of age or after the claimant became blind or disabled as defined in Section 12050 of the Welfare and Institutions Code.

SEC. 2. Section 20602 of the Revenue and Taxation Code is amended to read:

20602. (a) Upon approval of a claim described in Section 20601, the Controller may do either of the following:

(1) Make payments directly to a lender, mortgage company, escrow company, or county tax collector for the property taxes owed on behalf of a qualified claimant. Payments may, upon appropriation by the Legislature, be made out of the amounts otherwise appropriated pursuant to Section 16100 of the Government Code that are secured by a lien and obligation as specified by Article 1 (commencing with Section 16180) of Chapter 5 of Division 4 of the Government Code.

(2) Issue to the claimant a certificate of eligibility, which shall consist of two parts, both of which shall contain the name of the claimant, the address of the residential dwelling on which the claimant has applied for property tax postponement, and that other information and in that form as the Controller shall prescribe. In the event that that residential dwelling is located in a chartered city which levies and collects its own taxes, the Controller shall issue a duplicate certificate of eligibility to pay all or any part of the property taxes appearing on that city's tax bill. Each

part of a certificate of eligibility shall be payable in an unspecified amount and shall contain statements to identify the property tax installment to which it may be applied.

(b) The Controller shall prescribe the form of the certificates of eligibility to pay all delinquent taxes and assessments authorized by this chapter.

Upon or accompanying each certificate shall be a brief statement explaining that (1) those taxpayers whose property taxes are paid by a lender via an impound, trust or other similar account should enter the total amount of each installment on their respective certificates and mail both certificates to the tax collector at the same time, and (2) those taxpayers will receive a refund check from the county or city in the amount they entered on each certificate, within 30 days following the date on which the installment is paid by the lender or the certificate of eligibility is received by the tax collector, whichever is later, and (3) the intent of this procedure is to make sure the taxes on the claimant's dwelling are not paid twice.

(c) When a certificate of eligibility has been signed by the claimant, his or her spouse, or authorized agent and countersigned by the person authorized to collect property taxes or assessments for the local agency, such certificate shall constitute a written promise on the part of the State of California to pay the sum of money specified therein and such signed and countersigned certificate shall be deemed a negotiable instrument for the sole purpose of the payment of property taxes owing in the name of the claimant or his or her spouse for purposes of all laws of this state.

(d) A certificate of eligibility shall be valid for the duration prescribed thereon by the Controller.

(e) The Controller shall issue certificates of eligibility claims approved on or before September 30 between October 15 and November 1 of the fiscal year for which postponement is claimed. Certificates for claims approved after September 30 shall be issued at such times as the Controller determines will best implement the purpose of this chapter.

(f) The Controller shall prescribe the manner in which a claimant eligible under this chapter, who has been issued a certificate of eligibility which is lost or destroyed prior to being filed with the local agency pursuant to subdivision (b) may obtain a duplicate copy of said certificate as a replacement. (Under such conditions as may be prescribed by the Controller, a duplicate copy shall be deemed as having been filed with the local agency as of the date a claimant requests issuance of such duplicate copy.)

CHAPTER 830

An act to add and repeal Sections 26840.10 and 26840.11 of the Government Code, to add and repeal Sections 103627 and 103628 of the Health and Safety Code, and to add and repeal Sections 18309 and 18309.5 of the Welfare and Institutions Code, relating to domestic violence.

[Approved by Governor September 28, 2004. Filed with Secretary of State September 28, 2004.]

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

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

(a) Since 1996, over 150 individuals have died due to domestic violence in Alameda County.

(b) In 2000 alone, a total of 6,283 domestic violence-related calls were reported by law enforcement entities within Alameda County, with 2,259 adult cases filed and prosecuted for domestic violence. In calendar year 2000, 2,730 domestic violence-related calls were made to law enforcement officials in Solano County.

(c) More than 9,000 crisis calls are made to the four domestic violence shelter programs in Alameda County every year. From December 2003 through May 2004, the Family Violence Intervention Team has investigated 78 cases just for the unincorporated area of Solano County. Additionally, Solano County has one domestic violence shelter agency that runs two shelters. These beds stay full and the shelter agency maintains a waiting list.

(d) Domestic violence is ubiquitous. It cuts across all economic and education levels, all age groups, ethnicities, and other social and community characteristics.

(e) Domestic violence is insidious. It is characterized by a predictable, escalating cycle that can result in injury or death of victims, including children.

(f) Domestic violence puts children at risk. Children in homes where domestic violence occurs are physically abused or seriously neglected at a rate significantly higher than the national average in the general population, according to the National Woman Abuse Prevention Project in Washington, D.C.

(g) Domestic violence is learned and generational. Studies show that boys who witness family violence are more likely to batter their female partners as adults than boys raised in nonviolent homes. Girls who witness their mothers' abuse have higher rates of being battered as adults.

(h) Substance abuse is a significant factor contributing to, although not necessarily a cause of, domestic violence. Many domestic violence offenders have documented histories of substance abuse or were under the influence of drugs or alcohol at the time the felony crime was committed.

(i) Domestic violence is costly, both in human and organizational terms. The results of domestic violence have many ''hidden'' costs, such as job turnover, loss of productivity, school absenteeism, and low school performance, in addition to the high cost of law enforcement, civil and criminal justice, health services, mental health services, substance abuse treatment, human services, and community-based services.

(j) Alameda County, in recognizing that the domestic violence prevention, intervention, and prosecution system is complex and multifaceted, spanning civil, criminal, health, and social service sectors and that, to be effective, there must be alignment in the objectives, protocols, policies, and activities of each sector, has established the Alameda County Domestic Violence Collaborative. A May 2003 report of the collaborative, entitled ''A Profile of Family Violence in Alameda County—A Call for Action'' cited the need for oversight and coordination of domestic violence prevention, intervention, and prosecution efforts within the county, to ensure the efficient delivery of services, and to identify gaps in existing services. Solano County has declared ''a right to be safe and free of family violence'' through a policy that promotes a multidisciplinary approach to preventing family violence, and has created the Office of Family Violence Prevention to facilitate the implementation by the county departments and community-based organizations of the county's family violence prevention and intervention plan and strategies.

(k) Alameda and Solano Counties have determined that achievement of this alignment requires governmental oversight and coordination of the multiple agencies involved in the domestic violence system. This oversight and coordination is an essential link in a comprehensive effort to eliminate domestic violence.

(*l*) The Alameda County Domestic Violence Collaborative and Solano County's policies ''for a right to be safe and free of family violence'' address the full spectrum of prevention, early intervention, response, and remediation, as well as holding participating agencies accountable through specified performance measures and enhancing the automated systems that collect and report data. In order to provide a more accurate picture of family and domestic violence, Solano County has promoted the continued development of a data and information system to ensure accountability, identify measurable results, track the incidence of family violence, and identify any gaps in county-related services.

(m) Alameda and Solano Counties have also determined that the fees authorized by this legislation shall not exceed the cost of governmental oversight and coordination of the domestic violence system.

(n) Alameda and Solano Counties have further determined that the fees authorized by Section 26840.7 of the Government Code are not sufficient or allowable for this purpose, as these funds are to be used only for domestic violence centers offering direct services, and are currently fully utilized for this purpose.

SEC. 2. Section 26840.10 is added to the Government Code, to read:

26840.10. (a) The Alameda County Board of Supervisors, upon making findings and declarations for the need for governmental oversight and coordination of the multiple agencies dealing with domestic violence, may authorize an increase in the fees for marriage licenses and confidential marriage licenses, up to a maximum increase of two dollars ($2).

(b) Effective July 1 of each year, the Alameda County Board of Supervisors may authorize an increase in these fees by an amount equal to the increase in the Consumer Price Index for the San Francisco metropolitan area for the preceding calendar year, rounded to the nearest half-dollar ($0.50). The fees shall be allocated pursuant to Section 18309 of the Welfare and Institutions Code.

(c) In addition to the fee prescribed by Section 26840.1, in Alameda County, the person issuing authorization for the performance of a marriage or confidential marriage, or the county clerk upon providing a blank authorization form pursuant to Part 4 (commencing with Section 500) of Division 3 of the Family Code, shall collect the fees specified in subdivisions (a) and (b), at the time of providing the authorization.

(d) The Alameda County Board of Supervisors shall submit to the Assembly Judiciary Committee and the Senate Judiciary Committee, no later than July 1, 2009, a report containing the following information:

(1) The annual amounts of funds received and expended from fee increases for the purpose of governmental oversight and coordination of domestic violence prevention, intervention, and prosecution efforts in the county.

(2) Outcomes achieved as a result of the activities associated with the implementation of this section.

(e) 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. 3. Section 26840.11 is added to the Government Code, to read:

26840.11. (a) The Solano County Board of Supervisors, upon making findings and declarations for the need for governmental oversight and coordination of the multiple agencies dealing with domestic violence, may authorize an increase in the fees for marriage

licenses and confidential marriage licenses, up to a maximum increase of two dollars ($2).

(b) Effective July 1 of each year, the Solano County Board of Supervisors may authorize an increase in these fees by an amount equal to the increase in the Consumer Price Index for the San Francisco metropolitan area for the preceding calendar year, rounded to the nearest one-half dollar ($0.50). The fees shall be allocated pursuant to Section 18309.5 of the Welfare and Institutions Code.

(c) In addition to the fee prescribed by Section 26840.1, in Solano County, the person issuing authorization for the performance of a marriage or confidential marriage, or the county clerk upon providing a blank authorization form pursuant to Part 4 (commencing with Section 500) of Division 3 of the Family Code, shall collect the fees specified in subdivisions (a) and (b), at the time of providing the authorization.

(d) The Solano County Board of Supervisors shall submit to the Assembly and Senate Committees on Judiciary, no later than July 1, 2009, a report containing the following information:

(1) The annual amounts of funds received and expended from fee increases for the purpose of governmental oversight and coordination of domestic violence prevention, intervention, and prosecution efforts in the county.

(2) Outcomes achieved as a result of the activities associated with the implementation of this section.

(e) 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. 4. Section 103627 is added to the Health and Safety Code, to read:

103627. (a) The Alameda County Board of Supervisors, upon making findings and declarations supporting the need for governmental oversight and coordination of the multiple agencies dealing with domestic violence, may authorize an increase in the fees for certified copies of marriage certificates, birth certificates, fetal death records, and death records, up to a maximum increase of two dollars ($2).

(b) Effective July 1 of each year, the Alameda County Board of Supervisors may authorize an increase in these fees by an amount equal to the increase in the Consumer Price Index for the San Francisco metropolitan area for the preceding calendar year, rounded to the nearest half-dollar ($0.50). The fees shall be disposed of pursuant to the provisions of Section 18309 of the Welfare and Institutions Code.

(c) In addition to the fees prescribed by subdivisions (a) and (b), any applicant for a certified copy of a birth certificate, a fetal death record, or death record in Alameda County shall pay an additional fee to the local

registrar, county recorder, or county clerk as established by the Alameda County Board of Supervisors.

(d) 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. 5. Section 103628 is added to the Health and Safety Code, to read:

103628. (a) The Solano County Board of Supervisors, upon making findings and declarations for the need for governmental oversight and coordination of the multiple agencies dealing with domestic violence, may authorize an increase in the fees for certified copies of marriage certificates, birth certificates, fetal death records, and death records, up to a maximum increase of two dollars ($2).

(b) Effective July 1 of each year, the Solano County Board of Supervisors may authorize an increase in these fees by an amount equal to the increase in the Consumer Price Index for the San Francisco metropolitan area for the preceding calendar year, rounded to the nearest one-half dollar ($0.50). The fees shall be allocated pursuant to Section 18309.5 of the Welfare and Institutions Code.

(c) In addition to the fees prescribed by subdivisions (a) and (b), any applicant for a certified copy of a birth certificate, a fetal death record, or death record in Solano County shall pay an additional fee to the local registrar, county recorder, or county clerk as established by the Solano County Board of Supervisors.

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

SEC. 6. Section 18309 is added to the Welfare and Institutions Code, to read:

18309. (a) The Alameda County Board of Supervisors shall direct the local registrar, county recorder, and county clerk to deposit fees collected pursuant to Section 26840.10 of the Government Code and Section 103627 of the Health and Safety Code into a special fund. The county may retain up to 4 percent of the fund for administrative costs associated with the collection and segregation of the additional fees and the deposit of these fees into the special fund. Proceeds from the fund shall be used for governmental oversight and coordination of domestic violence and family violence prevention, intervention, and prosecution efforts among the court system, the district attorney's office, the public defender's office, law enforcement, the probation department, mental health, substance abuse, child welfare services, adult protective services, and community-based organizations and other agencies working in Alameda County in order to increase the effectiveness of prevention, early intervention, and prosecution of domestic and family violence.

(b) 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. 7. Section 18309.5 is added to the Welfare and Institutions Code, to read:

18309.5. (a) The Solano County Board of Supervisors shall direct the local registrar, county recorder, and county clerk to deposit fees collected pursuant to Section 26840.11 of the Government Code and Section 103628 of the Health and Safety Code into a special fund. The county may retain up to 4 percent of the fund for administrative costs associated with the collection and segregation of the additional fees and the deposit of these fees into the special fund. Proceeds from the fund shall be used for governmental oversight and coordination of domestic violence and family violence prevention, intervention, and prosecution efforts among the court system, the district attorney's office, the public defender's office, law enforcement, the probation department, mental health, substance abuse, child welfare services, adult protective services, and community-based organizations and other agencies working in Solano County in order to increase the effectiveness of prevention, early intervention, and prosecution of domestic and family violence.

(b) 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. 8. Due to the unique circumstances of the Counties of Alameda and Solano with respect to domestic violence, the Legislature hereby finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution. Therefore, the special legislation contained in Sections 2 to 7, inclusive, of this act is necessarily applicable only in the Counties of Alameda and Solano.

CHAPTER 831

An act to amend Section 1505 of the Health and Safety Code, and to amend Section 4689.1 of, to add Section 4688.5 to, and to add and repeal Section 4637.5 of, the Welfare and Institutions Code, relating to developmental services.

[Approved by Governor September 28, 2004. Filed with Secretary of State September 28, 2004.]

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

SECTION 1. Section 1505 of the Health and Safety Code is amended to read:

1505. This chapter does not apply to any of the following:

(a) Any health facility, as defined by Section 1250.

(b) Any clinic, as defined by Section 1202.

(c) Any juvenile placement facility approved by the California Youth Authority or any juvenile hall operated by a county.

(d) Any place in which a juvenile is judicially placed pursuant to subdivision (a) of Section 727 of the Welfare and Institutions Code.

(e) Any child day care facility, as defined in Section 1596.750.

(f) Any facility conducted by and for the adherents of any well-recognized church or religious denomination for the purpose of providing facilities for the care or treatment of the sick who depend upon prayer or spiritual means for healing in the practice of the religion of the church or denomination.

(g) Any school dormitory or similar facility determined by the department.

(h) Any house, institution, hotel, homeless shelter, or other similar place that supplies board and room only, or room only, or board only, provided that no resident thereof requires any element of care as determined by the director.

(i) Recovery houses or other similar facilities providing group living arrangements for persons recovering from alcoholism or drug addiction where the facility provides no care or supervision.

(j) Any alcoholism or drug abuse recovery or treatment facility as defined by Section 11834.11.

(k) Any arrangement for the receiving and care of persons by a relative or any arrangement for the receiving and care of persons from only one family by a close friend of the parent, guardian, or conservator, if the arrangement is not for financial profit and occurs only occasionally and irregularly, as defined by regulations of the department. For purposes of this chapter, arrangements for the receiving and care of persons by a relative shall include relatives of the child for the purpose of keeping sibling groups together.

(*l*) (1) Any home of a relative caregiver of children who are placed by a juvenile court, supervised by the county welfare or probation department, and the placement of whom is approved according to subdivision (d) of Section 309 of the Welfare and Institutions Code.

(2) Any home of a nonrelative extended family member, as described in Section 362.7 of the Welfare and Institutions Code, providing care to children who are placed by a juvenile court, supervised by the county welfare or probation department, and the placement of whom is

approved according to subdivision (d) of Section 309 of the Welfare and Institutions Code.

(m) Any supported living arrangement for individuals with developmental disabilities as defined in Section 4689 of the Welfare and Institutions Code.

(n) (1) Any family home agency, family home, or family teaching home as defined in Section 4689.1 of the Welfare and Institutions Code, that is vendored by the State Department of Developmental Services and that does any of the following:

(A) As a family home approved by a family home agency, provides 24-hour care for one or two adults with developmental disabilities in the residence of the family home provider or providers and the family home provider or providers' family, and the provider is not licensed by the State Department of Social Services or the State Department of Health Services or certified by a licensee of the State Department of Social Services or the State Department of Health Services.

(B) As a family teaching home approved by a family home agency, provides 24-hour care for a maximum of three adults with developmental disabilities in independent residences, whether contiguous or attached, and the provider is not licensed by the State Department of Social Services or the State Department of Health Services or certified by a licensee of the State Department of Social Services or the State Department of Health Services.

(C) As a family home agency, engages in recruiting, approving, and providing support to family homes.

(2) No part of this subdivision shall be construed as establishing by implication either a family home agency or family home licensing category.

(o) Any facility in which only Indian children who are eligible under the federal Indian Child Welfare Act, Chapter 21 (commencing with Section 1901) of Title 25 of the United States Code are placed and that is one of the following:

(1) An extended family member of the Indian child, as defined in Section 1903 of Title 25 of the United States Code.

(2) A foster home that is licensed, approved, or specified by the Indian child's tribe pursuant to Section 1915 of Title 25 of the United States Code.

(p) Any housing for elderly or disabled persons, or both, that is approved and operated pursuant to Section 202 of Public Law 86-372 (12 U.S.C.A. Sec. 1701g), or Section 811 of Public Law 101-625 (42 U.S.C.A. Sec. 8013), or whose mortgage is insured pursuant to Section 236 of Public Law 90-448 (12 U.S.C.A. Sec. 1715z), or that receives mortgage assistance pursuant to Section 221d (3) of Public Law 87-70 (12 U.S.C.A. Sec. 17151), where supportive services are made available

to residents at their option, as long as the project owner or operator does not contract for or provide the supportive services. The project owner or operator may coordinate, or help residents gain access to, the supportive services, either directly, or through a service coordinator.

(q) Any similar facility determined by the director.

SEC. 2. Section 4637.5 is added to the Welfare and Institutions Code, to read:

4637.5. (a) The State Department of Developmental Services shall provide data, by regional center, regarding all vendors providing services to regional center consumers for each fiscal year beginning with the 2003–04 fiscal year. The data shall include a list of the services provided by each vendor; to the extent data is available, an unduplicated count of consumers receiving the services, the total amount paid to each vendor for each service, and the average cost for each service. For parent voucher services, the department shall summarize the information for each regional center.

(b) The department shall compile the data and submit the information to the chairs and vice chairs of each fiscal committee by March 1 of the fiscal year following the close of the prior fiscal year. The data shall not include personal or confidential consumer information.

(c) The department shall evaluate and report on the adequacy of the data provided through March 1, 2008, and recommend changes, if needed. By March 1, 2008, the report shall be provided to the chair and vice chair of each fiscal committee.

(d) 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. 3. Section 4688.5 is added to the Welfare and Institutions Code, to read:

4688.5. (a) Notwithstanding any other provision of law to the contrary, the department may approve a proposal or proposals by Golden Gate Regional Center, Regional Center of the East Bay, and San Andreas Regional Center to provide for, secure, and assure the payment of a lease or leases on housing, developed pursuant to this section, based on the level of occupancy in each home, if all of the following conditions are met:

(1) The acquired or developed real property is occupied by individuals eligible for regional center services and is integrated with housing for people without disabilities.

(2) The regional center has approved the proposed ownership entity, management entity, and developer or development entity for each project, and, prior to granting the approval, has consulted with the

department and has provided to the department a proposal that includes the credentials of the proposed entities.

(3) The costs associated with the proposal are reasonable.

(4) The proposal includes a plan for a transfer at a time certain of the real property's ownership to a nonprofit entity to be approved by the regional center.

(b) Prior to approving a regional center proposal pursuant to subdivision (a), the department, in consultation with the California Housing Finance Agency and the Department of Housing and Community Development shall review all of the following:

(1) The terms and conditions of the financing structure for acquisition and/or development of the real property.

(2) Any and all agreements that govern the real property's ownership, occupancy, maintenance, management, and operation, to ensure that the use of the property is maintained for the benefit of persons with developmental disabilities.

(c) No sale encumbrance, hypothecation, assignment, refinancing, pledge, conveyance, exchange or transfer in any other form of the real property, or of any of its interest therein, shall occur without the prior written approval of the department and the Health and Human Services Agency.

(d) Notice of the restrictions pursuant to this section shall be recorded against the acquired or developed real property subject to this section.

(e) At least 45 days prior to granting approval under subdivision (c), the department shall provide notice to the chairs and vice chairs of the fiscal committees of the Assembly and the Senate, the Secretary of the Health and Human Services Agency, and the Director of Finance.

(f) The regional center shall not be eligible to acquire or develop real property for the purpose of residential housing.

SEC. 4. Section 4689.1 of the Welfare and Institutions Code, as amended by Chapter 193 of the Statutes of 2004, is amended to read:

4689.1. (a) The Legislature declares that it places a high priority on providing opportunities for adults with developmental disabilities to live with families approved by family home agencies and to receive services and supports in those settings as determined by the individual program plan. Family home agencies may offer services and supports in family homes or family teaching homes. All requirements of this section and Sections 4689.2 to 4689.6, inclusive, shall apply to a family home and a family teaching home.

(b) For purposes of this section, ''family home'' means a home that is owned, leased, or rented by, and is the family residence of, the family home provider or providers, and in which services and supports are provided to a maximum of two adults with developmental disabilities

regardless of their degree of disability, and who do not require continuous skilled nursing care.

(c) For purposes of this section, ''family teaching home'' means a home that is owned, leased, or rented by the family home agency wherein the family home provider and the individual have independent residences, either contiguous or attached, and in which services and supports are provided to a maximum of three adults with developmental disabilities regardless of their degree of disability, and who do not require continuous skilled nursing care.

(d) For purposes of this section, ''family home agency'' means a private not-for-profit agency that is vendored to do all of the following:

(1) Recruit, approve, train, and monitor family home providers.

(2) Provide social services and in-home support to family home providers.

(3) Assist adults with developmental disabilities in moving into approved family homes.

(e) For purposes of ensuring that regional centers may secure high quality services that provide supports in natural settings and promote inclusion and meaningful participation in community life for adults with developmental disabilities, the department shall promulgate regulations for family home agencies, family teaching homes, and family homes that shall include, but not be limited to, standards and requirements related to all of the following:

(1) Selection criteria for regional centers to apply in vendoring family home agencies, including, but not limited to, all of the following:

(A) The need for service.

(B) The experience of the agency or key personnel in providing the same or comparable services.

(C) The reasonableness of the agency's overhead.

(D) The capability of the regional center to monitor and evaluate the vendor.

(2) Vendorization.

(3) Operation of family home agencies, including, but not limited to, all of the following:

(A) Recruitment.

(B) Approval of family homes.

(C) Qualifications, training, and monitoring of family home providers.

(D) Assistance to consumers in moving into approved family homes.

(E) The range of services and supports to be provided.

(F) Family home agency staffing levels, qualifications, and training.

(4) Program design.

(5) Program and consumer records.

(6) Family homes.

(7) (A) Rates of payment for family home agencies and approved family home providers. In developing the rates pursuant to regulation, the department may require family home agencies and family homes to submit program cost or other information, as determined by the department.

(B) Regional center reimbursement to family home agencies for services in a family home shall not exceed rates for similar individuals when residing in other types of out-of-home care established pursuant to Section 4681.1.

(8) The department and regional center's monitoring and evaluation of the family home agency and approved homes, which shall be designed to ensure that services do all of the following:

(A) Conform to applicable laws and regulations and provide for the consumer's health and well-being.

(B) Assist the consumer in understanding and exercising his or her individual rights.

(C) Are consistent with the family home agency's program design and the consumer's individual program plan.

(D) Maximize the consumer's opportunities to have choices in where he or she lives, works, and socializes.

(E) Provide a supportive family home environment, available to the consumer 24 hours a day, that is clean, comfortable, and accommodating to the consumer's cultural preferences, values, and lifestyle.

(F) Are satisfactory to the consumer, as indicated by the consumer's quality of life as assessed by the consumer, his or her family, and if appointed, conservator, or significant others, or all of these, as well as by evaluation of outcomes relative to individual program plan objectives.

(9) Monthly monitoring visits by family home agency social service staff to approved family homes and family teaching homes.

(10) Procedures whereby the regional center and the department may enforce applicable provisions of law and regulation, investigate allegations of abuse or neglect, and impose sanctions on family home agencies and approved family homes and family teaching homes, including, but not limited to, all of the following:

(A) Requiring movement of a consumer from a family home under specified circumstances.

(B) Termination of approval of a family home or family teaching home.

(C) Termination of the family home agency's vendorization.

(11) Appeal procedures.

(f) Each adult with developmental disabilities placed in a family home or family teaching home shall have the rights specified in this

division, including, but not limited to, the rights specified in Section 4503.

(g) Prior to placement in a family home of an adult with developmental disabilities who has a conservator, consent of the conservator shall be obtained.

(h) The adoption of any emergency regulations to implement this section that are filed with the Office of Administrative Law within one year of the date on which the act that added this section 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.

CHAPTER 832

An act to add Section 49423.1 to the Education Code, relating to pupil health.

[Approved by Governor September 28, 2004. Filed with Secretary of State September 28, 2004.]

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

SECTION 1. Section 49423.1 is added to the Education Code, to read:

49423.1. (a) Notwithstanding Section 49422, any pupil who is required to take, during the regular schoolday, medication prescribed for him or her by a physician and surgeon, may be assisted by the school nurse or other designated school personnel or may carry and self-administer inhaled asthma medication if the school district receives the appropriate written statements specified in subdivision (b).

(b) (1) In order for a pupil to be assisted by a school nurse or other designated school personnel pursuant to subdivision (a), the school district shall obtain both a written statement from the physician and surgeon detailing the name of the medication, method, amount, and time schedules by which the medication is to be taken and a written statement from the parent, foster parent, or guardian of the pupil requesting that the school district assist the pupil in the matters set forth in the statement of the physician and surgeon.

(2) In order for a pupil to carry and self-administer prescription inhaled asthma medication pursuant to subdivision (a), the school district shall obtain both a written statement from the physician and surgeon detailing the name of the medication, method, amount, and time schedules by which the medication is to be taken, and confirming that the pupil is able to self-administer inhaled asthma medication, and a

written statement from the parent, foster parent, or guardian of the pupil consenting to the self-administration, providing a release for the school nurse or other designated school personnel to consult with the health care provider of the pupil regarding any questions that may arise with regard to the medication, and releasing the school district and school personnel from civil liability if the self-administering pupil suffers an adverse reaction by taking medication pursuant to this section.

(3) The written statements specified in this subdivision shall be provided at least annually and more frequently if the medication, dosage, frequency of administration, or reason for administration changes.

(c) A pupil may be subject to disciplinary action pursuant to Section 48900 if that pupil uses inhaled asthma medication in a manner other than as prescribed.

SEC. 2. This act shall become operative only if Senate Bill 1912 of the 2003–04 Regular Session is enacted and becomes effective on or before January 1, 2005.

CHAPTER 833

An act to amend Sections 1538.2 and 1538.5 of, and to add Sections 1524.6, 1538.3, and 1538.6 to, the Health and Safety Code, relating to community care facilities.

[Approved by Governor September 28, 2004. Filed with Secretary of State September 28, 2004.]

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

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

(a) Children living in group homes have a right to a safe and stable living environment.

(b) Group homes that provide inadequate supervision and services to children placed in the facilities put these children at risk and negatively impact the community.

(c) The state and the counties must reduce risks to placement children by helping to ensure that the best quality of supervision and services in community care facilities is encouraged, sustained, and consistently available for the children in the care of county placement agencies.

(d) A cooperative approach between group home providers and counties encourages group home providers to be good neighbors, allowing them to perform their critical functions within the community.

(e) Group home providers and county placement agencies share a common goal of assisting placement children in their physical, mental,

and emotional growth by placing them in a safe and nurturing environment to support their development into caring, productive, and mature adults.

SEC. 2. Section 1524.6 is added to the Health and Safety Code, to read:

1524.6. (a) In addition to any other requirement of this chapter, any group home facility, as defined by regulations of the department, providing care for any number of persons, that is not already subject to the requirements of Section 1524.5, shall provide a procedure approved by the licensing agency for immediate response to incidents and complaints, as defined by regulations of the department. This procedure shall include a method of ensuring that the owner, licensee, or person designated by the owner or licensee is notified of the incident or complaint, that the owner, licensee, or person designated by the owner or licensee has personally investigated the matter, and that the person making the complaint or reporting the incident has received a written response, within 30 days of receiving the complaint, of action taken, or a reason why no action needs to be taken.

(b) In order to ensure the opportunity for complaints to be made directly to the owner, licensee, or person designated by the owner or licensee, and to provide the opportunity for the owner, licensee, or person designated by the owner or licensee to meet neighborhood residents and learn of problems in the neighborhood, any group home facility shall establish a fixed time on a periodic basis when the owner, licensee, or person designated by the owner or licensee will be present. At this fixed time, information shall be provided to neighborhood residents of the complaint procedure pursuant to Section 1538.

(c) Facilities shall establish procedures to comply with the requirements of this section on or before July 1, 2005.

(d) This section shall not apply to family homes certified by foster family agencies, foster family homes, and small family homes. It is not the intent of the Legislature that this section be applied in a way that is contrary to the child's best interests.

SEC. 3. Section 1538.2 of the Health and Safety Code is amended to read:

1538.2. The director shall establish an automated license information system on licensees and former licensees of licensed community care facilities. The system shall maintain a record of any information that may be pertinent, as determined by the director, for licensure under this chapter and Chapter 3.6 (commencing with Section 1597.30). This information may include, but is not limited to, the licensees' addresses, telephone numbers, violations of any laws related to the care of clients in a community care facility, licenses, revocation

of any licenses and, to the extent permitted by federal law, social security numbers.

SEC. 4. Section 1538.3 is added to the Health and Safety Code, to read:

1538.3. A county may develop a cooperative agreement with the department to access disclosable, public record information from an automated system, other than the system described in Section 1538.2, concerning substantiated complaints for all group home facilities, as defined by regulations of the department, located within that county. Access to the database may be accomplished through a secure online transaction protocol.

SEC. 5. Section 1538.5 of the Health and Safety Code is amended to read:

1538.5. (a) (1) Not less than 30 days prior to the anniversary of the effective date of any residential community care facility license, except licensed foster family homes, the department may transmit a copy to the board members of the licensed facility, parents, legal guardians, conservators, clients' rights advocates, or placement agencies, as designated in each resident's placement agreement, of all inspection reports given to the facility by the department during the past year as a result of a substantiated complaint regarding a violation of this chapter relating to resident abuse and neglect, food, sanitation, incidental medical care, and residential supervision. During that one-year period the copy of the notices transmitted and the proof of the transmittal shall be open for public inspection.

(2) The department may transmit copies of the inspection reports referred to in paragraph (1) concerning group homes, as defined by regulations of the department, to the county in which a group home facility is located, if requested by that county.

(3) A group home facility shall maintain, at the facility, a copy of all licensing reports for the past three years that would be accessible to the public through the department, for inspection by placement officials, current and prospective facility clients, and these clients' family members who visit the facility.

(b) The facility operator, at the expense of the facility, shall transmit a copy of all substantiated complaints, by certified mail, to those persons described pursuant to paragraph (1) of subdivision (a) in the following cases:

(1) In the case of any substantiated complaint relating to resident physical or sexual abuse, the facility shall have three days, from the date the facility receives the licensing report from the state department to comply.

(2) In any case in which a facility has received three or more substantiated complaints relating to the same violation during the past

12 months, the facility shall have five days from the date the facility receives the licensing report to comply.

(c) Each residential facility shall retain a copy of the notices transmitted pursuant to subdivision (c) and proof of their transmittal by certified mail for a period of one year after their transmittal.

(d) If any residential facility to which this section applies fails to comply with this section, as determined by the department, the department shall initiate civil penalty action against the facility in accordance with Article 3 (commencing with Section 1530) and the related rules and regulations.

(e) Not less than 30 days prior to the anniversary of the effective date of the license of any group home facility, as defined by regulations of the department, at the request of the county in which the group home facility is located, a group home facility shall transmit to the county a copy of all incident reports prepared by the group home facility and transmitted to a placement agency in a county other than the county in which the group home facility is located, as described in subdivision (f) of Section 1536.1, that involved a response by local law enforcement or emergency services personnel. The county shall designate an official for the receipt of the incident reports and shall so notify the group home. Prior to transmitting copies of incident reports to the county, the group home facility shall redact the name of any child referenced in the incident reports, and any other identifying information regarding any child referenced in the reports, and the identity and location of the placement agency of any child referenced in the reports. The county may review the incident reports to ensure that the group home facilities have taken appropriate action to ensure the health and safety of the residents of the facility.

(f) The department shall notify the residential community care facility of its obligation when it is required to comply with this section.

SEC. 6. Section 1538.6 is added to the Health and Safety Code, to read:

1538.6. (a) When the department periodically reviews the record of substantiated complaints against each group home facility, pursuant to its oversight role as prescribed by Section 1534, to determine whether the nature, number, and severity of incidents upon which complaints were based constitute a basis for concern as to whether the provider is capable of effectively and efficiently operating the program, and if the department determines that there is cause for concern, it may contact the county in which a group home facility is located and placement agencies in other counties using the group home facility, and request their recommendations as to what action, if any, the department should take with regard to the provider's status as a licensed group home provider.

(b) It is the intent of the Legislature that the department make every effort to communicate with the county in which a group home facility is located when the department has concerns about group home facilities within that county.

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

CHAPTER 834

An act to amend Section 985 of the Military and Veterans Code, relating to veterans.

[Approved by Governor September 28, 2004. Filed with Secretary of State September 28, 2004.]

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

SECTION 1. Section 985 of the Military and Veterans Code is amended to read:

985. As used in this article:

(a) ''Farm'' means a tract of land, which, in the opinion of the department, is capable of producing sufficiently to provide a living for the purchaser and the purchaser's dependents.

(b) ''Home'' means any of the following:

(A) A parcel of real estate upon which there is a dwelling house and other buildings that will, in the opinion of the department, suit the needs of the purchaser and the purchaser's dependents as a place of abode.

(B) Condominium, as defined in subdivision (h).

(C) Mobilehome, as defined in subdivision (k).

(D) Cooperative housing, as defined in subdivision (m).

(c) ''Purchaser'' means a veteran or any person who has entered into a contract of purchase of a farm or home from the department.

(d) ''Purchase price'' means the price which the department pays for any farm or home.

(e) ''Selling price'' means the price for which the department sells any farm or home.

(f) ''Initial payment'' means the first payment to be made by a purchaser to the department for a farm or home.

(g) ''Progress payment plan'' means payment by the department for improvements on real property in installments as work progresses.

(h) ''Condominium'' means an estate in real property consisting of an undivided interest in common in a portion of a parcel of real property together with a separate interest in space in a residential building on the real property, such as an apartment, which, in the opinion of the department, suits the needs of the purchaser and the purchaser's dependents as a place of abode. A condominium may include, in addition, a separate interest in other portions of the real property.

(i) ''Effective rate of interest'' means the average interest rate of the interest on the unpaid balance due on a participation contract to which the interest of the department is subject and the interest rate on the unpaid balance of the purchase price, as determined by the department.

(j) ''Participation contract'' means an obligation secured by a deed of trust or mortgage, or other security interest established pursuant to regulations of the department.

(k) ''Mobilehome'' means either a parcel of real estate, or an undivided interest in common in a portion of a parcel of real property, on which is situated a mobilehome that will, in the opinion of the department, suit the needs of the purchaser and the purchaser's dependents as a place of abode and meets all requirements of local governmental jurisdictions.

(*l*) ''Immediate family'' means the spouse of a purchaser, the natural or adopted dependent children of the purchaser, and the parents of the purchaser if they are dependent on the purchaser for 50 percent or more of their support.

(m) ''Cooperative housing corporation'' means a real estate development in which membership in the corporation, by stock ownership, is coupled with the exclusive right to possess a portion of the real property.

CHAPTER 835

An act to add and repeal Section 10127.17 of the Insurance Code, relating to insurance.

[Approved by Governor September 28, 2004. Filed with Secretary of State September 28, 2004.]

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

SECTION 1. Section 10127.17 is added to the Insurance Code, to read:

10127.17. (a) The Life and Annuity Consumer Protection Fund is hereby created as a special account within the Insurance Fund. Each insurer admitted to transact insurance in this state shall pay a fee to be determined by the commissioner, not to exceed one dollar ($1), for each individual life insurance policy and each individual annuity product that it issues to a resident of this state with a value of fifteen thousand dollars ($15,000) or more. If an insurer elects to charge the purchaser of a life insurance policy or annuity product this fee, the fee shall be set forth as a separate charge in the contract schedule or premium notice. Life insurance or annuity forms are not required to be filed again for review as a consequence of this provision. This fee shall be assessed on all new individual life insurance policies and annuity products issued during the prior 12 months, and shall be deposited into the Life and Annuity Consumer Protection Fund.

(b) Moneys in the Life and Annuity Consumer Protection Fund shall be distributed by the commissioner and shall be exclusively dedicated to protecting consumers of life insurance and annuity products in this state. Moneys in the fund shall not be used for any other purpose.

(c) Fifty percent of these funds shall be distributed within the department for consumer protection functions related to individual life insurance and annuity products, including, but not limited to:

(1) Investigating and prosecuting financial abuse by insurance licensees, or persons holding themselves out to be insurance licensees, or any person purporting to be engaged in the business of insurance.

(2) Responding to consumer inquiries and complaints related to life insurance or annuity products.

(3) Educating consumers in all aspects of life insurance and annuity products, consumer protection, purchasing and using insurance and annuity products, claim filing, benefit delivery, and dispute resolution.

(4) Regulating and overseeing life insurance and annuity products and advertising for these products directed toward consumers.

(d) Fifty percent of the funds shall be distributed to district attorneys for investigating and prosecuting individual life insurance and annuity product financial abuse cases involving insurance licensees, or persons holding themselves out to be insurance licensees, or any person purporting to be engaged in the business of insurance, and for other projects beneficial to insurance consumers.

(1) The commissioner shall distribute funds to district attorneys who are able to show a likely positive outcome that will benefit consumers in the local jurisdiction based on specific criteria promulgated by the

commissioner. Each local district attorney desiring a portion of those funds shall submit to the commissioner an application, including, at a minimum:

(A) The proposed use of the moneys and the anticipated outcome.

(B) A list of all prior relevant cases or projects and a copy of the final accounting for each. If cases or projects are ongoing, the most recent accounting shall be provided.

(C) A detailed budget, including salaries, and general expenses, and specifically identifying the cost of purchase or rental of equipment or supplies.

(2) Each district attorney that receives funds pursuant to this section shall submit a final detailed accounting at the conclusion or closure of each case or project. For cases or projects that continue longer than six months, interim accountings shall be submitted every six months, or as otherwise directed by the commissioner.

(3) Each district attorney that receives funds pursuant to this section shall submit a final report to the commissioner, that may be made public, as to the success of the case or project conducted. The report shall provide information and statistics on the number of active investigations, arrests, indictments, and convictions. The applications for moneys, the distribution of moneys, and the annual reports shall be public documents.

(4) Notwithstanding any other provision of this section, information submitted to the commissioner pursuant to this section concerning criminal investigations, whether active or inactive, shall be confidential.

(5) The commissioner may conduct a fiscal audit of the programs administered under this subdivision. This fiscal audit shall be conducted by an internal audit unit of the department. The cost of any fiscal audits shall be paid for from the Life and Annuity Consumer Protection Fund established by this section.

(6) If the commissioner determines that a district attorney is unable or unwilling to investigate or prosecute a relevant financial abuse case, the commissioner may discontinue distribution of funds allocated for that matter and may redistribute those funds to other eligible district attorneys.

(e) The funds received under this section shall be deposited in the Life and Annuity Consumer Protection Fund within the Insurance Fund, and shall be expended and distributed as appropriated by the Legislature for the purposes of this section. The total amount contained in the Life and Annuity Consumer Protection Fund shall not exceed five million dollars ($5,000,000) annually. If, as of June 30 of any calendar year, the moneys in the fund exceed this amount, the commissioner shall adjust the amount of the assessment for the following year. An insurer, upon receipt of an invoice, shall transmit payment to the department for deposit in the

Life and Annuity Consumer Protection Fund. Any balance remaining in the Life and Annuity Consumer Protection Fund at the end of the fiscal year shall be retained in the account and carried forward to the next fiscal year.

(f) The commissioner may develop guidelines for implementing or clarifying these provisions, including guidelines for the allocation, distribution, and potential return of unused funds. The commissioner may, from time to time, issue regulations for implementing or clarifying these provisions.

(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.

CHAPTER 836

An act to amend Sections 285, 286, 296, 331.1, 331.2, 426, 672, 11701, 11704.5, 11710, and 11723 of the Vehicle Code, relating to all-terrain vehicles.

[Approved by Governor September 28, 2004. Filed with Secretary of State September 28, 2004.]

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

SECTION 1. Section 285 of the Vehicle Code is amended to read:

285. ''Dealer'' is a person not otherwise expressly excluded by Section 286 who:

(a) For commission, money, or other thing of value, sells, exchanges, buys, or offers for sale, negotiates or attempts to negotiate, a sale or exchange of an interest in, a vehicle subject to registration, a motorcycle or all-terrain vehicle subject to identification under this code, or a trailer subject to identification pursuant to Section 5014.1, or induces or attempts to induce any person to buy or exchange an interest in a vehicle and, who receives or expects to receive a commission, money, brokerage fees, profit, or any other thing of value, from either the seller or purchaser of the vehicle.

(b) Is engaged wholly or in part in the business of selling vehicles or buying or taking in trade, vehicles for the purpose of resale, selling, or offering for sale, or consigned to be sold, or otherwise dealing in vehicles, whether or not the vehicles are owned by the person.

SEC. 2. Section 286 of the Vehicle Code is amended to read:

286. The term ''dealer'' does not include any of the following:

(a) Insurance companies, banks, finance companies, public officials, or any other person coming into possession of vehicles in the regular course of business, who sells vehicles under a contractual right or obligation, in performance of an official duty, or in authority of any court of law, if the sale is for the purpose of saving the seller from loss or pursuant to the authority of a court.

(b) Persons who sell or distribute vehicles of a type subject to registration or trailers subject to identification pursuant to Section 5014.1 for a manufacturer to vehicle dealers licensed under this code, or who are employed by manufacturers or distributors to promote the sale of vehicles dealt in by those manufacturers or distributors. However, any of those persons who also sell vehicles at retail are vehicle dealers and are subject to this code.

(c) Persons regularly employed as salespersons by vehicle dealers licensed under this code while acting within the scope of that employment.

(d) Persons engaged exclusively in the bona fide business of exporting vehicles or of soliciting orders for the sale and delivery of vehicles outside the territorial limits of the United States, if no federal excise tax is legally payable or refundable on any of the transactions. Persons not engaged exclusively in the bona fide business of exporting vehicles, but who are engaged in the business of soliciting orders for the sale and delivery of vehicles, outside the territorial limits of the United States are exempt from licensure as dealers only if their sales of vehicles produce less than 10 percent of their total gross revenue from all business transacted.

(e) Persons not engaged in the purchase or sale of vehicles as a business, who dispose of any vehicle acquired and used in good faith, for their own personal use, or for use in their business, and not for the purpose of avoiding the provisions of this code.

(f) Persons who are engaged in the purchase, sale, or exchange of vehicles, other than motorcycles, all-terrain vehicles, or trailers subject to identification under this code, that are not intended for use on the highways.

(g) Persons temporarily retained as auctioneers solely for the purpose of disposing of vehicle stock inventories by means of public auction on behalf of the owners at the owners' place of business, or as otherwise approved by the department, if intermediate physical possession or control of, or an ownership interest in, the inventory is not conveyed to the persons so retained.

(h) Persons who are engaged exclusively in the business of purchasing, selling, servicing, or exchanging racing vehicles, parts for racing vehicles, and trailers designed and intended by the manufacturer to be used exclusively for carrying racing vehicles. For purposes of this

subdivision, ''racing vehicle'' means a motor vehicle of a type used exclusively in a contest of speed or in a competitive trial of speed which is not intended for use on the highways.

(i) A person who is a lessor.

(j) A person who is a renter.

(k) A salvage pool.

(*l*) A yacht broker who is subject to the Yacht and Ship Brokers Act (Article 2 (commencing with Section 700) of Chapter 5 of Division 3 of the Harbors and Navigation Code) and who sells used boat trailers in conjunction with the sale of a vessel.

(m) A licensed automobile dismantler who sells vehicles that have been reported for dismantling as provided in Section 11520.

(n) The Director of Corrections when selling vehicles pursuant to Section 2813.5 of the Penal Code.

(o) (1) Any public or private nonprofit charitable, religious, or educational institution or organization that sells vehicles if all of the following conditions are met:

(A) The institution or organization qualifies for state tax-exempt status under Section 23701d of the Revenue and Taxation Code, and tax-exempt status under Section 501(c)(3) of the federal Internal Revenue Code.

(B) The vehicles sold were donated to the nonprofit charitable, religious, or educational institution or organization.

(C) The vehicles subject to retail sale meet all of the applicable equipment requirements of Division 12 (commencing with Section 24000) and are in compliance with emission control requirements as evidenced by the issuance of a certificate pursuant to subdivision (b) of Section 44015 of the Health and Safety Code. Under no circumstances may any institution or organization transfer the responsibility of obtaining a smog inspection certificate to the buyer of the vehicle.

(D) The proceeds of the sale of the vehicles are retained by that institution or organization for its charitable, religious, or educational purposes.

(2) An institution or organization described in paragraph (1) may sell vehicles on behalf of another institution or organization under the following conditions:

(A) The nonselling institution or organization meets the requirements of paragraph (1).

(B) The selling and nonselling institutions or organizations enter into a signed, written agreement pursuant to subparagraph (A) of paragraph (3) of subdivision (a) of Section 1660.

(C) The selling institution or organization transfers the proceeds from the sale of each vehicle to the nonselling institution or organization within 45 days of the sale. All net proceeds transferred to the nonselling

institution or organization shall clearly be identifiable to the sale of a specific vehicle. The selling institution or organization may retain a percentage of the proceeds from the sale of a particular vehicle. However, any retained proceeds shall be used by the selling institution or organization for its charitable, religious, or educational purposes.

(D) At the time of transferring the proceeds, the selling institution or organization shall provide to the nonselling institution or organization, an itemized listing of the vehicles sold and the amount for which each vehicle was sold.

(E) In the event the selling institution or organization cannot complete a retail sale of a particular vehicle, or if the vehicle cannot be transferred as a wholesale transaction to a dealer licensed under this code, the vehicle shall be returned to the nonselling institution or organization and the written agreement revised to reflect that return. Under no circumstances may a selling institution or organization transfer or donate the vehicle to a third party that is excluded from the definition of a dealer under this section.

(3) An institution or organization described in this subdivision shall retain all records required to be retained pursuant to Section 1660.

(p) A motor club, as defined in Section 12142 of the Insurance Code, that does not arrange or negotiate individual motor vehicle purchase transactions on behalf of its members but refers members to a new motor vehicle dealer for the purchase of a new motor vehicle and does not receive a fee from the dealer contingent upon the sale of the vehicle.

SEC. 3. Section 296 of the Vehicle Code is amended to read:

296. A ''distributor'' is any person other than a manufacturer who sells or distributes new vehicles subject to registration under this code, new trailers subject to identification pursuant to Section 5014.1, or new off-highway motorcycles or all-terrain vehicles subject to identification under this code, to dealers in this state and maintains representatives for the purpose of contacting dealers or prospective dealers in this state.

SEC. 4. Section 331.1 of the Vehicle Code is amended to read:

331.1. A ''franchisee'' is any person who, pursuant to a franchise, receives new motor vehicles subject to registration under this code, new off-highway motorcycles, as defined in Section 436, new all-terrain vehicles, as defined in Section 111, or new trailers subject to identification pursuant to Section 5014.1 from the franchisor and who offers for sale or lease, or sells or leases the vehicles at retail or is granted the right to perform authorized warranty repairs and service, or the right to perform any combination of these activities.

SEC. 5. Section 331.2 of the Vehicle Code is amended to read:

331.2. A ''franchisor'' is any person who manufactures, assembles, or distributes new motor vehicles subject to registration under this code, new off-highway motorcycles, as defined in Section 436, new all-terrain

vehicles, as defined in Section 111, or new trailers subject to identification pursuant to Section 5014.1 and who grants a franchise.

SEC. 6. Section 426 of the Vehicle Code is amended to read:

426. ''New motor vehicle dealer'' is a dealer, as defined in Section 285, who, in addition to the requirements of that section, either acquires for resale new and unregistered motor vehicles from manufacturers or distributors of those motor vehicles or acquires for resale new off-highway motorcycles, or all-terrain vehicles from manufacturers or distributors of the vehicles. A distinction shall not be made, nor any different construction be given to the definition of ''new motor vehicle dealer'' and ''dealer'' except for the application of the provisions of Chapter 6 (commencing with Section 3000) of Division 2 and Section 11704.5. Sections 3001 and 3003 do not, however, apply to a dealer who deals exclusively in motorcycles, all-terrain vehicles, or recreational vehicles, as defined in subdivision (a) of Section 18010 of the Health and Safety Code.

SEC. 7. Section 672 of the Vehicle Code is amended to read:

672. (a) ''Vehicle manufacturer'' is any person who produces from raw materials or new basic components a vehicle of a type subject to registration under this code, off-highway motorcycles or all-terrain vehicles subject to identification under this code, or trailers subject to identification pursuant to Section 5014.1, or who permanently alters, for purposes of retail sales, new commercial vehicles by converting the vehicles into house cars that display the insignia of approval required by Section 18056 of the Health and Safety Code and any regulations issued pursuant thereto by the Department of Housing and Community Development. As used in this section, ''permanently alters'' does not include the permanent attachment of a camper to a vehicle.

(b) A vehicle manufacturer that produces a vehicle of a type subject to registration that consists of used or reconditioned parts, for the purposes of the code, is a remanufacturer, as defined in Section 507.8.

(c) Unless a vehicle manufacturer either grants franchises to franchisees in this state, or issues vehicle warranties directly to franchisees in this state or consumers in this state, the manufacturer shall have an established place of business or a representative in this state.

(d) The scope and application of this section are limited to Division 2 (commencing with Section 1500) and Division 5 (commencing with Section 11100).

SEC. 8. Section 11701 of the Vehicle Code is amended to read:

11701. Every manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, transporter, or dealer of vehicles of a type subject to registration, or snowmobiles, motorcycles, all-terrain vehicles, or trailers of a type subject to identification, shall make application to the department for a license

containing a general distinguishing number. The applicant shall submit proof of his or her status as a bona fide manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, transporter, or dealer as may reasonably be required by the department.

SEC. 9. Section 11704.5 of the Vehicle Code is amended to read:

11704.5. (a) Except as provided in subdivision (e), every person who applies for a dealer's license pursuant to Section 11701 for the purpose of transacting sales of used vehicles on a retail or wholesale basis only shall be required to take and successfully complete a written examination prepared and administered by the department before a license may be issued. The examination shall include, but need not be limited to, all of the following laws and subjects:

(1) Division 12 (commencing with Section 24000), relating to equipment of vehicles.

(2) Advertising.

(3) Odometers.

(4) Vehicle licensing and registration.

(5) Branch locations.

(6) Offsite sales.

(7) Unlawful dealer activities.

(8) Handling, completion, and disposition of departmental forms.

(b) Prior to the first taking of an examination under subdivision (a), every applicant shall successfully complete a preliminary educational program of not less than four hours. The program shall address, but not be limited to, all of the following topics:

(1) Chapter 2B (commencing with Section 2981) of Title 14 of Part 4 of Division 3 of the Civil Code, relating to motor vehicle sales finance.

(2) Motor vehicle financing.

(3) Truth in lending.

(4) Sales and use taxes.

(5) Division 12 (commencing with Section 24000), relating to equipment of vehicles.

(6) Advertising.

(7) Odometers.

(8) Vehicle licensing and registration.

(9) Branch locations.

(10) Offsite sales.

(11) Unlawful dealer activities.

(12) Air pollution control requirements.

(13) Regulations of the Bureau of Automotive Repair.

(14) Handling, completion, and disposition of departmental forms.

(c) (1) Except as provided in paragraph (2) or (3), every dealer who is required to complete a written examination and an educational

program pursuant to subdivisions (a) and (b) and who is thereafter issued a dealer's license shall successfully complete, every two years after issuance of that license, an educational program of not less than four hours that offers instruction in the subjects listed under subdivision (a) and the topics listed under subdivision (b), in order to maintain or renew that license.

(2) A dealer is not required to complete the educational program set forth in paragraph (1) if the educational program is completed by a managerial employee employed by the dealer.

(3) Paragraph (1) does not apply to dealers who sell vehicles on a wholesale basis only and who, in a one-year period, deal with less than 50 vehicles that are subject to registration.

(d) Instruction described in subdivisions (b) and (c) may be provided by generally accredited educational institutions, private vocational schools, and educational programs and seminars offered by professional societies, organizations, trade associations, and other educational and technical programs that meet the requirements of this section or by the department.

(e) This section does not apply to any of the following:

(1) An applicant for a new vehicle dealer's license or any employee of that dealer.

(2) A person who holds a valid license as an automobile dismantler, an employee of that dismantler, or an applicant for an automobile dismantler's license.

(3) An applicant for a motorcycle only dealer's license or any employee of that dealer.

(4) An applicant for a trailer only dealer's license or any employee of that dealer.

(5) An applicant for an all-terrain only dealer's license or any employee of that dealer.

SEC. 10. Section 11710 of the Vehicle Code is amended to read:

11710. (a) Before any dealer's or remanufacturer's license is issued or renewed by the department to any applicant therefor, the applicant shall procure and file with the department a bond executed by an admitted surety insurer, approved as to form by the Attorney General, and conditioned that the applicant shall not practice any fraud or make any fraudulent representation which will cause a monetary loss to a purchaser, seller, financing agency, or governmental agency.

(b) A dealer's bond shall be in the amount of fifty thousand dollars ($50,000), except the bond of a dealer who deals exclusively in motorcycles or all-terrain vehicles shall be in the amount of ten thousand dollars ($10,000). Before the license is renewed by the department, the dealer, other than a dealer who deals exclusively in motorcycles or all-terrain vehicles, shall procure and file a bond in the amount of fifty

thousand dollars ($50,000). A remanufacturer bond shall be in the amount of fifty thousand dollars ($50,000).

(c) Liability under the bond is to remain at full value. If the amount of liability under the bond is decreased or there is outstanding a final court judgment for which the dealer or remanufacturer and sureties are liable, the dealer's or remanufacturer's license shall be automatically suspended. In order to reinstate the license and special plates, the licensee shall either file an additional bond or restore the bond on file to the original amount, or shall terminate the outstanding judgment for which the dealer or remanufacturer and sureties are liable.

(d) A dealer's or remanufacturer's license, or renewal of the license, shall not be issued to any applicant therefor, unless and until the applicant files with the department a good and sufficient instrument, in writing, in which the applicant appoints the director as the true and lawful agent of the applicant upon whom all process may be served in any action, or actions, which may thereafter be commenced against the applicant, arising out of any claim for damages suffered by any firm, person, association, or corporation, by reason of the violation of the applicant of any of the terms and provisions of this code or any condition of the dealer's or remanufacturer's bond. The applicant shall stipulate and agree in the appointment that any process directed to the applicant, when personal service of process upon the applicant cannot be made in this state after due diligence and, in that case, is served upon the director or, in the event of the director's absence from the office, upon any employee in charge of the office of the director, shall be of the same legal force and effect as if served upon the applicant personally. The applicant shall further stipulate and agree, in writing, that the agency created by the appointment shall continue for and during the period covered by any license that may be issued and so long thereafter as the applicant may be made to answer in damages for a violation of this code or any condition of the bond. The instrument appointing the director as the agent for the applicant for service of process shall be acknowledged by the applicant before a notary public. In any case where the licensee is served with process by service upon the director, one copy of the summons and complaint shall be left with the director or in the director's office in Sacramento or mailed to the office of the director in Sacramento. A fee of five dollars ($5) shall also be paid to the director at the time of service of the copy of the summons and complaint. Service on the director shall be a sufficient service on the licensee if a notice of service and a copy of the summons and complaint are immediately sent by registered mail by the plaintiff or the plaintiff's attorney to the licensee. A copy of the summons and complaint shall also be mailed by the plaintiff or the plaintiff's attorney to the surety on the applicant's bond at the address of the surety given in the bond, postpaid and registered with request for

return receipt. The director shall keep a record of all process so served upon the director, which record shall show the day and hour of service and shall retain the summons and complaint so served on file. Where the licensee is served with process by service upon the director, the licensee shall have and be allowed 30 days from and after the service within which to answer any complaint or other pleading which may be filed in the cause. However, for purposes of venue, where the licensee is served with process by service upon the director, the service is deemed to have been made upon the licensee in the county in which the licensee has or last had an established place of business.

SEC. 11. Section 11723 of the Vehicle Code is amended to read:

11723. The board may require that fees shall be paid to the department for the issuance or renewal of a license to do business as a new motor vehicle dealer, dealer branch, manufacturer, manufacturer branch, distributor, distributor branch, or representative. The fees shall be to reimburse the department for costs incurred in licensing those dealers, manufacturers, distributors, branches, and representatives and for related administrative costs incurred on behalf of the board. The board may also require that an additional fee be paid to the department when the licensee has failed to pay the fee authorized by Section 3016 prior to the expiration of its occupational license and special plates and the licensee utilizes the 30-day late renewal period authorized by subdivision (c) of Section 11717.

This section shall not apply to dealers, manufacturers, distributors, or representatives of vehicles not subject to registration under this code, except dealers, manufacturers, manufacturer branches, distributors, distributor branches, or representatives of, off-highway motorcycles, as defined in Section 436, all-terrain vehicles, as defined in Section 111, and trailers subject to identification pursuant to Section 5014.1.

CHAPTER 837

An act to add Article 9 (commencing with Section 124172) to Chapter 3 of Part 2 of Division 106 of the Health and Safety Code, relating to vaccinations.

[Approved by Governor September 28, 2004. Filed with Secretary of State September 28, 2004.]

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

SECTION 1. Article 9 (commencing with Section 124172) is added to Chapter 3 of Part 2 of Division 106 of the Health and Safety Code, to read:

Article 9. Mercury-containing Vaccines

124172. (a) Except for an influenza vaccine described in subdivision (b), on and after July 1, 2006, a person who is knowingly pregnant or who is under three years of age shall not be vaccinated with a mercury-containing vaccine or injected with a mercury-containing product that contains more than 0.5 micrograms of mercury per 0.5 milliliter dose.

(b) On and after July 1, 2006, a person who is knowingly pregnant or who is under three years of age shall not be vaccinated with a mercury-containing influenza vaccine that contains more than 1.0 microgram of mercury per 0.5 milliliter dose.

(c) The Secretary of the Health and Human Services Agency may exempt the use of a vaccine from this section if the secretary finds, and the Governor concurs, that an actual or potential bioterrorist incident or other actual or potential public health emergency, including an epidemic or shortage of supply of a vaccine that would prevent children under three years of age and knowingly pregnant women from receiving the needed vaccine, makes necessary the administration of a vaccine containing more mercury than the maximum level set forth in subdivision (a), or subdivision (b) in the case of influenza vaccine. The exemption shall meet all of the following conditions:

(1) It shall not be issued for more than 12 months.

(2) At the end of the effective period of the exemption, the secretary may issue another exemption for up to 12 months for the same incident or public health emergency, if the secretary makes a determination that the exemption is necessary as set forth in this subdivision, the Governor concurs with the exemption, and the secretary notifies the Legislature and interested parties pursuant to paragraphs (3), (4), and (5).

(3) Upon issuing an exemption, the secretary and the Governor shall, within 48 hours, notify the Legislature about the exemption and about the secretary's findings justifying the exemption's approval.

(4) Upon request for an exemption, the secretary shall notify interested parties, who have expressed their interest to the secretary in writing, that an exemption request has been made.

(5) Upon issuing an exemption, the secretary shall, within seven days, notify interested parties, who have expressed their interest to the

secretary in writing, about the exemption and about the secretary's findings justifying the exemption's approval.

CHAPTER 838

An act to add and repeal Section 17463.6 of the Education Code, relating to public schools.

[Approved by Governor September 28, 2004. Filed with Secretary of State September 28, 2004.]

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

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

(a) Santa Clara Unified School District sold properties surplus to their needs.

(b) The properties in question described in subdivision (a) were unsuitable for school district use or school construction purposes.

(c) The properties were purchased entirely with local funds.

SEC. 2. Section 17463.6 is added to the Education Code, to read:

17463.6. (a) Notwithstanding any other law, the Santa Clara Unified School District may use the proceeds from the sale of surplus real property, together with any personal property located thereon, if purchased entirely with local funds and may deposit the proceeds thereof into the general fund of the school district or county office of education for any one-time general fund purpose. If the purchase of the property was made using the proceeds of a general obligation bond act or revenue derived from developer fees, the amount of the proceeds of the transaction that may be deposited into the general fund of the school district or county office of education may not exceed the percentage computed by the difference between the purchase price of the property and the proceeds from the transaction, divided by the amount of the proceeds of the transaction. For the purposes of this section, proceeds of the transaction means either of the following, as appropriate:

(1) The amount realized from the sale of property minus reasonable expenses related to the sale.

(2) For any transaction that did not result in a lump-sum payment of the proceeds of the transaction, the proceeds of the transaction shall be calculated as the net present value of the transaction.

(b) The State Allocation Board shall reduce an apportionment of hardship assistance awarded to the Santa Clara Unified School District pursuant to Article 8 (commencing with Section 17075.10) by an

amount equal to the amount of the sale of surplus real property used for a one-time expenditure of the school district pursuant to this section.

(c) If the Santa Clara Unified School District exercises the authority granted pursuant to this section, the district is ineligible for hardship funding from the State School Deferred Maintenance Fund under Section 17587 for five years after the date of sale.

(d) Before the Santa Clara Unified School District exercises the authority granted pursuant to this section, the governing board of the school district shall first submit to the State Allocation Board documents certifying the following:

(1) The district has no major deferred maintenance requirements not covered by existing capital outlay resources.

(2) The sale of real property pursuant to this section does not violate any provisions of a local bond act.

(3) The real property is not suitable to meet any projected school construction need for the next 10 years.

(e) Before the Santa Clara Unified School District exercises the authority granted pursuant to this section, the governing board of the school district shall at a regularly scheduled meeting present a plan for expending one-time resources pursuant to this section. The plan shall identify the source and use of the funds and describe the reasons why the expenditure will not result in ongoing fiscal obligations for the district.

(f) This section is repealed on January 1, 2007, unless a later enacted statute that becomes operative on or before January 1, 2007, deletes or extends the date on which it is repealed.

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 financial circumstances of the Santa Clara Unified School District.

CHAPTER 839

An act to add and repeal Section 17463.6 of the Education Code, relating to public schools, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 2004. Filed with Secretary of State September 28, 2004.]

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

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

(a) Santee School District and Capistrano Unified School District possess properties surplus to their needs.

(b) The properties in question described in subdivision (a) are unsuitable for school district use or school construction purposes.

(c) The properties were purchased entirely with local funds.

SEC. 2. Section 17463.6 is added to the Education Code, to read:

17463.6. (a) Notwithstanding any other law, the Santee School District and the Capistrano Unified School District may sell surplus real property, together with any personal property located thereon, purchased entirely with local funds, to any nonprofit, for profit, or governmental entity and may deposit the proceeds thereof into the general fund of the school district or county office of education; and may use the proceeds from the sale for any one-time general fund purpose. If the purchase of the property was made using the proceeds of a general obligation bond act or revenue derived from developer fees, the amount of the proceeds of the transaction that may be deposited into the general fund of the school district or county office of education may not exceed the percentage computed by the difference between the purchase price of the property and the proceeds from the transaction, divided by the amount of the proceeds of the transaction. For the purposes of this section, proceeds of the transaction means either of the following, as appropriate:

(1) The amount realized from the sale of property after reasonable expenses related to the sale.

(2) For any transaction that does not result in a lump-sum payment of the proceeds of the transaction, the proceeds of the transaction shall be calculated as the net present value of the future cashflow generated by the transaction.

(b) The State Allocation Board shall reduce an apportionment of hardship assistance awarded to the Santee School District or the Capistrano Unified School District pursuant to Article 8 (commencing with Section 17075.10) by an amount equal to the amount of the sale of surplus real property used for a one-time expenditure of the school district pursuant to this section.

(c) If the Santee School District or Capistrano Unified School District exercises the authority granted pursuant to this section, the district is ineligible for hardship funding from the State School Deferred Maintenance Fund under Section 17587 for five years after the date of sale.

(d) Before the Santee School District or the Capistrano Unified School District exercises the authority granted pursuant to this section, the governing board of the school district shall first submit to the State Allocation Board documents certifying the following:

(1) The district has no major deferred maintenance requirements not covered by existing capital outlay resources.

(2) The sale of real property pursuant to this section does not violate any provisions of a local bond act.

(3) The real property is not suitable to meet any projected school construction need for the next 10 years.

(e) Before the Santee School District or the Capistrano Unified School District exercises the authority granted pursuant to this section, the governing board of the school district shall at a regularly scheduled meeting present a plan for expending one-time resources pursuant to this section. The plan shall identify the source and use of the funds and describe the reasons why the expenditure will not result in ongoing fiscal obligations for the district.

(f) This section is repealed on January 1, 2007, unless a later enacted statute that becomes operative on or before January 1, 2007, deletes or extends the date on which it is repealed.

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 financial circumstances of the Santee School District and the Capistrano Unified School District.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

The fiscal crisis facing this state and the need for fiscal flexibility of the Santee School District and the Capistrano Unified School District require that this act take effect immediately.

CHAPTER 840

An act to amend Sections 13823.15, 13823.16, and 13837 of the Penal Code, relating to domestic violence, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 2004. Filed with Secretary of State September 28, 2004.]

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

SECTION 1. It is the intent of the Legislature that victims' services programs that were administered by the Office of Criminal Justice Planning be temporarily redirected to the Office of Emergency Services (OES) with oversight by the Office of Homeland Security (OHS). It is further the intent of the Legislature that domestic violence programs

within the Domestic Violence Branch and sexual assault/rape crisis programs within the Sexual Assault Branch of the Office of Criminal Justice Planning, and the Battered Women's Shelter Program in the Department of Health Services (DHS), be permanently consolidated into one office, branch, or department, within one state agency.

SEC. 2. Section 13823.15 of the Penal Code is amended to read:

13823.15. (a) The Legislature finds the problem of domestic violence to be of serious and increasing magnitude. The Legislature also finds that existing domestic violence services are underfunded and that some areas of the state are unserved or underserved. Therefore, it is the intent of the Legislature that a goal or purpose of the Office of Emergency Services (OES) shall be to ensure that all victims of domestic violence served by the OES Comprehensive Statewide Domestic Violence Program receive comprehensive, quality services.

(b) There is in the OES a Comprehensive Statewide Domestic Violence Program. The goals of the program shall be to provide local assistance to existing service providers, to maintain and expand services based on a demonstrated need, and to establish a targeted or directed program for the development and establishment of domestic violence services in currently unserved and underserved areas. The OES shall provide financial and technical assistance to local domestic violence centers in implementing all of the following services:

(1) Twenty-four-hour crisis hotlines.
(2) Counseling.
(3) Business centers.
(4) Emergency ''safe'' homes or shelters for victims and families.
(5) Emergency food and clothing.
(6) Emergency response to calls from law enforcement.
(7) Hospital emergency room protocol and assistance.
(8) Emergency transportation.
(9) Supportive peer counseling.
(10) Counseling for children.
(11) Court and social service advocacy.
(12) Legal assistance with temporary restraining orders, devices, and custody disputes.
(13) Community resource and referral.
(14) Household establishment assistance.

Priority for financial and technical assistance shall be given to emergency shelter programs and ''safe'' homes for victims of domestic violence and their children.

(c) Except as provided in subdivision (f), the OES and the advisory committee established pursuant to Section 13823.16 shall collaboratively administer the Comprehensive Statewide Domestic Violence Program, and shall allocate funds to local centers meeting the

criteria for funding. All organizations funded pursuant to this section shall utilize volunteers to the greatest extent possible.

The centers may seek, receive, and make use of any funds which may be available from all public and private sources to augment any state funds received pursuant to this section.

Centers receiving funding shall provide cash or an in-kind match of at least 10 percent of the funds received pursuant to this section.

(d) The OES shall conduct statewide training workshops on domestic violence for local centers, law enforcement, and other service providers designed to enhance service programs. The workshops shall be planned in conjunction with practitioners and experts in the field of domestic violence prevention.

(e) The OES shall develop and disseminate throughout the state information and materials concerning domestic violence. The OES shall also establish a resource center for the collection, retention, and distribution of educational materials related to domestic violence. The OES may utilize and contract with existing domestic violence technical assistance centers in this state in complying with the requirements of this subdivision.

(f) The funding process for distributing grant awards to domestic violence shelter service providers (DVSSPs) shall be administered by the OES as follows:

(1) The OES shall establish each of the following:

(A) The process and standards for determining whether to grant, renew, or deny funding to any DVSSP applying or reapplying for funding under the terms of the program.

(B) For DVSSPs applying for grants under the RFP process described in paragraph (2), a system for grading grant applications in relation to the standards established pursuant to subparagraph (A), and an appeal process for applications that are denied. A description of this grading system and appeal process shall be provided to all DVSSPs as part of the application required under the RFP process.

(C) For DVSSPs reapplying for funding under the RFA process described in paragraph (4), a system for grading the performance of DVSSPs in relation to the standards established pursuant to subparagraph (A), and an appeal process for decisions to deny or reduce funding. A description of this grading system and appeal process shall be provided to all DVSSPs receiving grants under this program.

(2) Grants for shelters that were not funded in the previous cycle shall be awarded as a result of a competitive request for proposal (RFP) process. The RFP process shall comply with all applicable state and federal statutes for domestic violence shelter funding, and to the extent possible, the response to the RFP shall not exceed 25 narrative pages, excluding attachments.

(3) Grants shall be awarded to DVSSPs that propose to maintain shelters or services previously granted funding pursuant to this section, to expand existing services or create new services, or to establish new domestic violence shelters in underserved or unserved areas. Each grant shall be awarded for a three-year term.

(4) DVSSPs reapplying for grants shall not be subject to a competitive grant process, but shall be subject to a request for application (RFA) process. The RFA process shall consist in part of an assessment of the past performance history of the DVSSP in relation to the standards established pursuant to paragraph (1). The RFA process shall comply with all applicable state and federal statutes for domestic violence center funding, and to the extent possible, the response to the RFA shall not exceed 10 narrative pages, excluding attachments.

(5) Any DVSSP funded through this program in the previous grant cycle, including any DVSSP funded by Chapter 707 of the Statutes of 2001, shall be funded upon reapplication, unless, pursuant to the assessment required under the RFA process, its past performance history fails to meet the standards established by the OES pursuant to paragraph (1).

(6) The OES shall conduct a minimum of one site visit every three years for each DVSSP funded pursuant to this subdivision. The purpose of the site visit shall be to conduct a performance assessment of, and provide subsequent technical assistance for, each shelter visited. The performance assessment shall include, but need not be limited to, a review of all of the following:

(A) Progress in meeting program goals and objectives.

(B) Agency organization and facilities.

(C) Personnel policies, files, and training.

(D) Recordkeeping, budgeting, and expenditures.

(E) Documentation, data collection, and client confidentiality.

(7) After each site visit conducted pursuant to paragraph (6), the OES shall provide a written report to the DVSSP summarizing the performance of the DVSSP, any deficiencies noted, any corrective action needed, and a deadline for corrective action to be completed. The OES shall also develop a corrective action plan for verifying the completion of any corrective action required. The OES shall submit its written report to the DVSSP no more than 60 days after the site visit. No grant under the RFA process shall be denied if the DVSSP has not received a site visit during the previous three years, unless the OES is aware of criminal violations relative to the administration of grant funding.

(8) DVSSPs receiving written reports of deficiencies or orders for corrective action after a site visit shall be given no less than six months' time to take corrective action before the deficiencies or failure to correct may be considered in the next RFA process. However, the OES shall

have the discretion to reduce the time to take corrective action in cases where the deficiencies present a significant health or safety risk or when other severe circumstances are found to exist. If corrective action is deemed necessary, and a DVSSP fails to comply, or if other deficiencies exist that, in the judgment of the OES, cannot be corrected, the OES shall determine, using its grading system, whether continued funding for the DVSSP should be reduced or denied altogether. If a DVSSP has been determined to be deficient, the OES may, at any point during the DVSSP's funding cycle following the expiration of the period for corrective action, deny or reduce any further funding.

(9) If a DVSSP applies or reapplies for funding pursuant to this section and that funding is denied or reduced, the decision to deny or reduce funding shall be provided in writing to the DVSSP, along with a written explanation of the reasons for the reduction or denial made in accordance with the grading system for the RFP or RFA process. Except as otherwise provided, any appeal of the decision to deny or reduce funding shall be made in accordance with the appeal process established by the OES. The appeal process shall allow a DVSSP a minimum of 30 days to appeal after a decision to deny or reduce funding. All pending appeals shall be resolved before final funding decisions are reached.

(10) It is the intent of the Legislature that priority for additional funds that become available shall be given to currently funded, new, or previously unfunded DVSSPs for expansion of services. However, the OES may determine when expansion is needed to accommodate underserved or unserved areas. If supplemental funding is unavailable, the OES shall have the authority to lower the base level of grants to all currently funded DVSSPs in order to provide funding for currently funded, new, or previously unfunded DVSSPs that will provide services in underserved or unserved areas. However, to the extent reasonable, funding reductions shall be reduced proportionately among all currently funded DVSSPs. After the amount of funding reductions has been determined, DVSSPs that are currently funded and those applying for funding shall be notified of changes in the available level of funding prior to the next application process. Funding reductions made under this paragraph shall not be subject to appeal.

(11) Notwithstanding any other provision of this section, OES may reduce funding to a DVSSP funded pursuant to this section if federal funding support is reduced. Funding reductions as a result of a reduction in federal funding shall not be subject to appeal.

(12) Nothing in this section shall be construed to supersede any function or duty required by federal acts, rules, regulations, or guidelines for the distribution of federal grants.

(13) As a condition of receiving funding pursuant to this section, DVSSPs shall do all of the following:

(A) Provide matching funds or in-kind contributions equivalent to not less than 10 percent of the grant they would receive. The matching funds or in-kind contributions may come from other governmental or private sources.

(B) Ensure that appropriate staff and volunteers having client contact meet the definition of ''domestic violence counselor'' as specified in subdivision (a) of Section 1037.1 of the Evidence Code. The minimum training specified in paragraph (2) of subdivision (a) of Section 1037.1 of the Evidence Code shall be provided to those staff and volunteers who do not meet the requirements of paragraph (1) of subdivision (a) of Section 1037.1 of the Evidence Code.

(14) The following definitions shall apply for purposes of this subdivision:

(A) ''Domestic violence'' means the infliction or threat of physical harm against past or present adult or adolescent female intimate partners, including physical, sexual, and psychological abuse against the woman, and is a part of a pattern of assaultive, coercive, and controlling behaviors directed at achieving compliance from or control over that woman.

(B) ''Domestic violence shelter service provider'' or ''DVSSP'' means a victim services provider that operates an established system of services providing safe and confidential emergency housing on a 24-hour basis for victims of domestic violence and their children, including, but not limited to, hotel or motel arrangements, haven, and safe houses.

(C) ''Emergency shelter'' means a confidential or safe location that provides emergency housing on a 24-hour basis for victims of domestic violence and their children.

(g) The OES may hire the support staff and utilize all resources necessary to carry out the purposes of this section. The OES shall not utilize more than 10 percent of any funds appropriated for the purpose of the program established by this section for the administration of that program.

SEC. 3. Section 13823.16 of the Penal Code is amended to read:

13823.16. (a) The Comprehensive Statewide Domestic Violence Program established pursuant to Section 13823.15 shall be collaboratively administered by the Office of Emergency Services (OES) and an advisory council. The membership of the OES Domestic Violence Advisory Council shall consist of experts in the provision of either direct or intervention services to battered women and their children, within the scope and intention of the OES Domestic Violence Assistance Program.

(b) The membership of the council shall consist of domestic violence victims' advocates, battered women service providers, and

representatives of women's organizations, law enforcement, and other groups involved with domestic violence. At least one-half of the council membership shall consist of domestic violence victims' advocates or battered women service providers from organizations such as the California Alliance Against Domestic Violence. It is the intent of the Legislature that the council membership reflect the ethnic, racial, cultural, and geographic diversity of the state. The council shall be composed of no more than 13 voting members and two nonvoting members who shall be appointed, as follows:

(1) Seven voting members shall be appointed by the Governor.

(2) Three voting members shall be appointed by the Speaker of the Assembly.

(3) Three voting members shall be appointed by the Senate Committee on Rules.

(4) Two nonvoting members shall be Members of the Legislature, one appointed by the Speaker of the Assembly and one appointed by the Senate Committee on Rules. Any Member of the Legislature appointed to the council shall meet with the council and participate in its activities to the extent that participation is not incompatible with his or her position as a Member of the Legislature.

(c) The OES shall collaborate closely with the council in developing funding priorities, framing the request for proposals, and soliciting proposals.

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

SEC. 4. Section 13837 of the Penal Code is amended to read:

13837. (a) The OES shall provide grants to proposed and existing child sexual exploitation and child sexual abuse victim counseling centers and prevention programs. Grant recipients shall provide appropriate in-person counseling and referral services during normal business hours, and maintain other standards or services which shall be determined to be appropriate by the advisory committee established pursuant to Section 13836 as grant conditions. The advisory committee shall identify the criteria to be utilized in awarding the grants provided by this chapter before any funds are allocated.

In order to be eligible for funding pursuant to this chapter, the centers shall demonstrate an ability to receive and make use of any funds available from governmental, voluntary, philanthropic, or other sources which may be used to augment any state funds appropriated for purposes of this chapter. Each center receiving funds pursuant to this chapter shall make every attempt to qualify for any available federal funding.

State funds provided to establish centers shall be utilized when possible, as determined by the advisory committee, to expand the

program and shall not be expended to reduce fiscal support from other public or private sources. The centers shall maintain quarterly and final fiscal reports in a form to be prescribed by the administering agency. In granting funds, the advisory committee shall give priority to centers which are operated in close proximity to medical treatment facilities.

(b) (1) It is the intent of the Legislature that a goal or purpose of the OES shall be to ensure that all victims of sexual assault and rape receive comprehensive, quality services, and to decrease the incidence of sexual assault through school and community education and prevention programs.

(2) The OES and the advisory committee established pursuant to Section 13836 shall collaboratively administer sexual assault/rape crisis center victim services programs and provide grants to proposed and existing sexual assault services programs (SASPs) operating local rape victim centers and prevention programs. All SASPs shall provide the services in subparagraphs (A) to (G), inclusive, and to the extent federal funding is made available, shall also provide the service described in subparagraph (H). The OES shall provide financial and technical assistance to SASPs in implementing the following services:

(A) Crisis intervention, 24 hours per day, seven days per week.

(B) Followup counseling services.

(C) In-person counseling, including group counseling.

(D) Accompaniment services.

(E) Advocacy services.

(F) Information and referrals to victims and the general public.

(G) Community education presentations.

(H) Rape prevention presentations and self-defense programs.

(3) The funding process for distributing grant awards to SASPs shall be administered as follows:

(A) The OES and the advisory committee established pursuant to Section 13836 shall collaboratively adopt each of the following:

(i) The process and standards for determining whether to grant, renew, or deny funding to any SASP applying or reapplying for funding under the terms of the program.

(ii) For SASPs applying for grants under the RFP process described in subparagraph (B), a system for grading grant applications in relation to the standards established pursuant to clause (i), and an appeal process for applications that are denied. A description of this grading system and appeal process shall be provided to all SASPs as part of the application required under the RFP process.

(iii) For SASPs reapplying for funding under the RFA process described in subparagraph (D), a system for grading the performance of SASPs in relation to the standards established pursuant to clause (i), and an appeal process for decisions to deny or reduce funding. A description

of this grading system and appeal process shall be provided to all SASPs receiving grants under this program.

(B) Grants for centers that have previously not been funded or were not funded in the previous cycle shall be awarded as a result of a competitive request for proposal (RFP) process. The RFP process shall comply with all applicable state and federal statutes for sexual assault/rape crisis center funding, and to the extent possible, the response to the RFP shall not exceed 25 narrative pages, excluding attachments.

(C) Grants shall be awarded to SASPs that propose to maintain services previously granted funding pursuant to this section, to expand existing services or create new services, or to establish new sexual assault/rape crisis centers in underserved or unserved areas. Each grant shall be awarded for a three-year term.

(D) SASPs reapplying for grants shall not be subject to a competitive bidding grant process, but shall be subject to a request for application (RFA) process. The RFA process for a SASP reapplying for grant funds shall consist in part of an assessment of the past performance history of the SASP in relation to the standards established pursuant to subparagraph (A). The RFA process shall comply with all applicable state and federal statutes for sexual assault/rape crisis center funding, and to the extent possible, the response to the RFA shall not exceed 10 narrative pages, excluding attachments.

(E) Any SASP funded through this program in the previous grant cycle shall be funded upon reapplication, unless its past performance history fails to meet the standards established pursuant to clause (i) of subparagraph (A).

(F) The OES shall conduct a minimum of one site visit every three years for each agency funded to provide sexual assault/rape crisis centers. The purpose of the site visit shall be to conduct a performance assessment of, and provide subsequent technical assistance for, each center visited. The performance assessment shall include, but need not be limited to, a review of all of the following:

(i) Progress in meeting program goals and objectives.

(ii) Agency organization and facilities.

(iii) Personnel policies, files, and training.

(iv) Recordkeeping, budgeting, and expenditures.

(v) Documentation, data collection, and client confidentiality.

(G) After each site visit conducted pursuant to subparagraph (F), the OES shall provide a written report to the SASP summarizing the performance of the SASP, any deficiencies noted, any corrective action needed, and a deadline for corrective action to be completed. The OES shall also develop a corrective action plan for verifying the completion of any corrective action required. The OES shall submit its written report

to the SASP no more than 60 days after the site visit. No grant under the RFA process shall be denied if the SASP did not receive a site visit during the previous three years, unless the OES is aware of criminal violations relative to the administration of grant funding.

(H) SASPs receiving written reports of deficiencies or orders for corrective action after a site visit shall be given no less than six months' time to take corrective action before the deficiencies or failure to correct may be considered in the next RFA process. However, the OES shall have the discretion to reduce the time to take corrective action in cases where the deficiencies present a significant health or safety risk or when other severe circumstances are found to exist. If corrective action is deemed necessary, and a SASP fails to comply, or if other deficiencies exist that, in the judgment of the OES, cannot be corrected, the OES shall determine, using its grading system, whether continued funding for the SASP should be reduced or denied altogether. If a SASP has been determined to be deficient, the OES may, at any point during the SASP's funding cycle following the expiration of the period for corrective action, deny or reduce any further funding.

(I) If a SASP applies or reapplies for funding pursuant to this section and that funding is denied or reduced, the decision to deny or reduce funding shall be provided in writing to the SASP, along with a written explanation of the reasons for the reduction or denial made in accordance with the grading system for the RFP or RFA process. Except as otherwise provided, any appeal of the decision to deny or reduce funding shall be made in accordance with the appeal process established by the OES. The appeal process shall allow a SASP a minimum of 30 days to appeal after a decision to deny or reduce funding. All pending appeals shall be resolved before final funding decisions are reached.

(J) It is the intent of the Legislature that priority for additional funds that become available shall be given to currently funded, new, or previously unfunded SASPs for expansion of services. However, the OES may determine when expansion is needed to accommodate underserved or unserved areas. If supplemental funding is unavailable, the OES shall have the authority to lower the base level of grants to all currently funded SASPs in order to provide funding for currently funded, new, or previously unfunded SASPs that will provide services in underserved or unserved areas. However, to the extent reasonable, funding reductions shall be reduced proportionately among all currently funded SASPs. After the amount of funding reductions has been determined, SASPs that are currently funded and those applying for funding shall be notified of changes in the available level of funding prior to the next application process. Funding reductions made under this paragraph shall not be subject to appeal.

(K) Notwithstanding any other provision of this section, the OES may reduce funding to a SASP funded pursuant to this section if federal funding support is reduced. Funding reductions as a result of a reduction in federal funding shall not be subject to appeal.

(L) Nothing in this section shall be construed to supersede any function or duty required by federal acts, rules, regulations, or guidelines for the distribution of federal grants.

(M) As a condition of receiving funding pursuant to this section, a SASP shall do each of the following:

(i) Demonstrate an ability to receive and make use of any funds available from governmental, voluntary, philanthropic, or other sources that may be used to augment any state funds appropriated for purposes of this chapter.

(ii) Make every attempt to qualify for any available federal funding.

(N) For the purposes of this paragraph, ''sexual assault'' means an act or attempt made punishable by Section 220, 261, 261.5, 262, 264.1, 266c, 285, 286, 288, 288a, or 647.6.

(O) For the purposes of this paragraph, ''sexual assault service program'' or ''SASP'' means an agency operating a sexual assault/rape crisis center.

SEC. 5. The changes made to existing law in Sections 2 to 4, inclusive, of this act shall not apply to grants approved by the Office of Emergency Services in the 2004–05 funding cycle.

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 ensure the efficient and orderly administration of grant programs to assist victims of domestic violence and sex offenses, it is necessary that this act take effect immediately.

CHAPTER 841

An act to add Sections 16002.5 and 16004.5 to the Welfare and Institutions Code, relating to dependent children.

[Approved by Governor September 28, 2004. Filed with Secretary of State September 28, 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 Teen Parents in Foster Care Act.

SEC. 2. The Legislature finds and declares all of the following:

(a) It is in the best interest of children whenever possible to be raised in safe and secure birth families. Dependent teen parents, their children, and society at large all benefit when these young families are given a reasonable opportunity and assistance to form and remain a family.

(b) Babies born to dependent teen parents are more likely to be separated from their birth families than babies born to teen parents who are not in the dependency system.

(c) Teen parents in the foster care system have less access to traditional support systems typically available to minor and first time parents. Additionally, expectations placed on dependent teen parents are frequently unrealistic and inconsistent with their age and developmental level. However, dependent minor parents, given opportunities, adequate resources, support, and guidance, are able to successfully parent their children.

(d) The current infant supplemental payment rate paid to a foster parent who provides care for both a minor dependent parent and infant, which is designed to provide for the costs of infant care, such as transportation, food, shelter, clothing, and equipment, including diapers and car seats, as well as the costs of mentoring the foster child who is the infant's parent and assisting them to develop parenting skills, is less than the basic AFDC-FC rate for an infant placed into foster care and is not commensurate with the rising costs of infant care. Further, the low rate serves as a disincentive in recruiting and retaining trained foster care providers who are willing to care for both a dependent minor parent and infant, and who are skilled in providing the mentoring services and role modeling that these dependent minor parents need in order to become successful parents. Finally, the resulting shortage in qualified foster care providers can cause teen parents and their babies to be separated, disrupting the parent-child bond and potentially severing family ties.

(e) It is the intent of the Legislature in enacting this act to preserve the continuity of the family unit and ensure the maintenance and strengthening of family relationships between a dependent minor parent and his or her child by ensuring that the courts and responsible agencies shall, whenever possible, protect the best interests of a dependent minor parent and his or her child as a unit, and shall make diligent and active efforts to maintain relationships between minor parents and their children, including, but not limited to, placement of the minor parent and the child together in as family-like a setting as possible.

SEC. 3. Section 16002.5 is added to the Welfare and Institutions Code, to read:

16002.5. It is the intent of the Legislature to maintain the continuity of the family unit and to support and preserve families headed by minor parents who are themselves dependents of the juvenile court by ensuring

that minor parents and their children are placed together in as family-like a setting as possible, unless it has been determined that placement together poses a risk to the child.

(a) To the greatest extent possible, dependent minor parents and their children living in foster care shall be provided with access to existing services for which they may be eligible, that are specifically targeted at supporting, maintaining, and developing both the parent-child bond and the minor parent's ability to provide a permanent and safe home for the child. Examples of these services may include, but shall not be limited to, child care, parenting classes, child development classes, and frequent visitation.

(b) The minor parent shall be given the ability to attend school, complete homework, and participate in age and developmentally appropriate activities unrelated to and separate from parenting.

(c) Foster care placements for minor parents and their children shall demonstrate a willingness and ability to provide support and assistance to dependent minor parents and their children.

(d) Contact between the child, the custodial parent, and the noncustodial parent shall be facilitated when that contact is found to be in the best interest of the child.

(e) For the purpose of this section, ''child'' refers to the child born to the minor parent.

(f) For the purpose of this section, ''minor parent'' refers to a dependent child who is also a parent.

SEC. 4. Section 16004.5 is added to the Welfare and Institutions Code, to read:

16004.5. (a) The Legislature finds and declares that there is an urgent need to develop placement resources to permit minor parents and their children to remain together in out-of-home care when the minor parent is removed from the custody of his or her parents due to abuse or neglect.

(b) To the greatest extent possible, child welfare agencies, in conjunction with providers and the state, and in conjunction with ongoing development of placements and the allocation of existing placement resources, shall identify and utilize whole family placements and other placement models that provide supportive family focused care for dependent teens and their children. In identifying these placements, child welfare agencies shall work with providers and stakeholders to identify and develop programs and program models designed to meet these goals.

(c) In order to effectively plan, identify, and develop needed resources, and effectively address the needs of this population, the department and local child welfare agencies are encouraged to collect data on the number of minors in foster care who give birth and the

number of minor parents who remain in placement with their minor children. The department shall aggregate the data annually.

(d) In order to recruit, train, and retain qualified and supportive foster care providers for this population, the department and local child welfare agencies, in consultation with other interested stakeholders, are encouraged to collect information to be used to develop a more cost-effective infant supplemental payment rate structure that more adequately reimburses caregivers for the costs of infant care and teen parent mentoring.

SEC. 5. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 842

An act to amend Sections 11165.3, 11165.5, 11165.6, 11165.7, 11165.12, 11166, 11166.01, 11166.05, 11166.5, 11167, 11167.5, 11169, 11170, 11170.5, and 11172 of, to amend and renumber Sections 11166.7, 11166.8, 11166.9, 11166.95, and 11174.4 of, to add an article heading immediately preceding Section 11174.32 to Chapter 2 of Title 1 of Part 4 of, and to repeal Section 11170.6 of, the Penal Code, and to amend Section 16513 of the Welfare and Institutions Code, relating to child abuse reporting.

[Approved by Governor September 28, 2004. Filed with Secretary of State September 28, 2004.]

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

SECTION 1. Section 11165.3 of the Penal Code is amended to read:

11165.3. As used in this article, ''the willful harming or injuring of a child or the endangering of the person or health of a child,'' means a situation in which any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation in which his or her person or health is endangered.

SEC. 3. Section 11165.5 of the Penal Code is amended to read:

11165.5. As used in this article, the term ''abuse or neglect in out-of-home care'' includes physical injury inflicted upon a child by another person by other than accidental means, sexual abuse as defined in Section 11165.1, neglect as defined in Section 11165.2, unlawful corporal punishment or injury as defined in Section 11165.4, or the willful harming or injuring of a child or the endangering of the person or health of a child, as defined in Section 11165.3, where the person responsible for the child's welfare is a licensee, administrator, or employee of any facility licensed to care for children, or an administrator or employee of a public or private school or other institution or agency. ''Abuse or neglect in out-of-home care'' does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

SEC. 4. Section 11165.6 of the Penal Code is amended to read:

11165.6. As used in this article, the term ''child abuse or neglect'' includes physical injury inflicted by other than accidental means upon a child by another person, sexual abuse as defined in Section 11165.1, neglect as defined in Section 11165.2, the willful harming or injuring of a child or the endangering of the person or health of a child, as defined in Section 11165.3, and unlawful corporal punishment or injury as defined in Section 11165.4. ''Child abuse or neglect'' does not include a mutual affray between minors. ''Child abuse or neglect'' does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

SEC. 5. Section 11165.7 of the Penal Code is amended to read:

11165.7. (a) As used in this article, ''mandated reporter'' is defined as any of the following:

(1) A teacher.

(2) An instructional aide.

(3) A teacher's aide or teacher's assistant employed by any public or private school.

(4) A classified employee of any public school.

(5) An administrative officer or supervisor of child welfare and attendance, or a certificated pupil personnel employee of any public or private school.

(6) An administrator of a public or private day camp.

(7) An administrator or employee of a public or private youth center, youth recreation program, or youth organization.

(8) An administrator or employee of a public or private organization whose duties require direct contact and supervision of children.

(9) Any employee of a county office of education or the California Department of Education, whose duties bring the employee into contact with children on a regular basis.

(10) A licensee, an administrator, or an employee of a licensed community care or child day care facility.

(11) A Head Start program teacher.

(12) A licensing worker or licensing evaluator employed by a licensing agency as defined in Section 11165.11.

(13) A public assistance worker.

(14) An employee of a child care institution, including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities.

(15) A social worker, probation officer, or parole officer.

(16) An employee of a school district police or security department.

(17) Any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school.

(18) A district attorney investigator, inspector, or local child support agency caseworker unless the investigator, inspector, or caseworker is working with an attorney appointed pursuant to Section 317 of the Welfare and Institutions Code to represent a minor.

(19) A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, who is not otherwise described in this section.

(20) A firefighter, except for volunteer firefighters.

(21) A physician, surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, marriage, family and child counselor, clinical social worker, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

(22) Any emergency medical technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(23) A psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.

(24) A marriage, family, and child therapist trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code.

(25) An unlicensed marriage, family, and child therapist intern registered under Section 4980.44 of the Business and Professions Code.

(26) A state or county public health employee who treats a minor for venereal disease or any other condition.

(27) A coroner.

(28) A medical examiner, or any other person who performs autopsies.

(29) A commercial film and photographic print processor, as specified in subdivision (d) of Section 11166. As used in this article, ''commercial film and photographic print processor'' means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.

(30) A child visitation monitor. As used in this article, ''child visitation monitor'' means any person who, for financial compensation, acts as monitor of a visit between a child and any other person when the monitoring of that visit has been ordered by a court of law.

(31) An animal control officer or humane society officer. For the purposes of this article, the following terms have the following meanings:

(A) ''Animal control officer'' means any person employed by a city, county, or city and county for the purpose of enforcing animal control laws or regulations.

(B) ''Humane society officer'' means any person appointed or employed by a public or private entity as a humane officer who is qualified pursuant to Section 14502 or 14503 of the Corporations Code.

(32) A clergy member, as specified in subdivision (c) of Section 11166. As used in this article, ''clergy member'' means a priest, minister, rabbi, religious practitioner, or similar functionary of a church, temple, or recognized denomination or organization.

(33) Any custodian of records of a clergy member, as specified in this section and subdivision (c) of Section 11166.

(34) Any employee of any police department, county sheriff's department, county probation department, or county welfare department.

(35) An employee or volunteer of a Court Appointed Special Advocate program, as defined in Rule 1424 of the California Rules of Court.

(36) A custodial officer as defined in Section 831.5.

(b) Except as provided in paragraph (35) of subdivision (a), volunteers of public or private organizations whose duties require direct contact with and supervision of children are not mandated reporters but are encouraged to obtain training in the identification and reporting of child abuse and neglect and are further encouraged to report known or suspected instances of child abuse or neglect to an agency specified in Section 11165.9.

(c) Employers are strongly encouraged to provide their employees who are mandated reporters with training in the duties imposed by this article. This training shall include training in child abuse and neglect identification and training in child abuse and neglect reporting. Whether

or not employers provide their employees with training in child abuse and neglect identification and reporting, the employers shall provide their employees who are mandated reporters with the statement required pursuant to subdivision (a) of Section 11166.5.

(d) School districts that do not train their employees specified in subdivision (a) in the duties of mandated reporters under the child abuse reporting laws shall report to the State Department of Education the reasons why this training is not provided.

(e) The absence of training shall not excuse a mandated reporter from the duties imposed by this article.

(f) Public and private organizations are encouraged to provide their volunteers whose duties require direct contact with and supervision of children with training in the identification and reporting of child abuse and neglect.

SEC. 5.5. Section 11165.7 of the Penal Code is amended to read:

11165.7. (a) As used in this article, ''mandated reporter'' is defined as any of the following:

(1) A teacher.

(2) An instructional aide.

(3) A teacher's aide or teacher's assistant employed by any public or private school.

(4) A classified employee of any public school.

(5) An administrative officer or supervisor of child welfare and attendance, or a certificated pupil personnel employee of any public or private school.

(6) An administrator of a public or private day camp.

(7) An administrator or employee of a public or private youth center, youth recreation program, or youth organization.

(8) An administrator or employee of a public or private organization whose duties require direct contact and supervision of children.

(9) Any employee of a county office of education or the California Department of Education, whose duties bring the employee into contact with children on a regular basis.

(10) A licensee, an administrator, or an employee of a licensed community care or child day care facility.

(11) A Head Start program teacher.

(12) A licensing worker or licensing evaluator employed by a licensing agency as defined in Section 11165.11.

(13) A public assistance worker.

(14) An employee of a child care institution, including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities.

(15) A social worker, probation officer, or parole officer.

(16) An employee of a school district police or security department.

(17) Any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school.

(18) A district attorney investigator, inspector, or local child support agency caseworker unless the investigator, inspector, or caseworker is working with an attorney appointed pursuant to Section 317 of the Welfare and Institutions Code to represent a minor.

(19) A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, who is not otherwise described in this section.

(20) A firefighter, except for volunteer firefighters.

(21) A physician, surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, marriage, family and child counselor, clinical social worker, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

(22) Any emergency medical technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(23) A psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.

(24) A marriage, family, and child therapist trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code.

(25) An unlicensed marriage, family, and child therapist intern registered under Section 4980.44 of the Business and Professions Code.

(26) A state or county public health employee who treats a minor for venereal disease or any other condition.

(27) A coroner.

(28) A medical examiner, or any other person who performs autopsies.

(29) A commercial film and photographic print processor, as specified in subdivision (d) of Section 11166. As used in this article, ''commercial film and photographic print processor'' means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.

(30) A child visitation monitor. As used in this article, ''child visitation monitor'' means any person who, for financial compensation, acts as monitor of a visit between a child and any other person when the monitoring of that visit has been ordered by a court of law.

(31) An animal control officer or humane society officer. For the purposes of this article, the following terms have the following meanings:

(A) ''Animal control officer'' means any person employed by a city, county, or city and county for the purpose of enforcing animal control laws or regulations.

(B) ''Humane society officer'' means any person appointed or employed by a public or private entity as a humane officer who is qualified pursuant to Section 14502 or 14503 of the Corporations Code.

(32) A clergy member, as specified in subdivision (c) of Section 11166. As used in this article, ''clergy member'' means a priest, minister, rabbi, religious practitioner, or similar functionary of a church, temple, or recognized denomination or organization.

(33) Any custodian of records of a clergy member, as specified in this section and subdivision (c) of Section 11166.

(34) Any employee of any police department, county sheriff's department, county probation department, or county welfare department.

(35) An employee or volunteer of a Court Appointed Special Advocate program, as defined in Rule 1424 of the California Rules of Court.

(36) A custodial officer as defined in Section 831.5.

(37) Any person providing services to a minor child under Section 12300 or 12300.1 of the Welfare and Institutions Code.

(b) Except as provided in paragraph (35) of subdivision (a), volunteers of public or private organizations whose duties require direct contact with and supervision of children are not mandated reporters but are encouraged to obtain training in the identification and reporting of child abuse and neglect and are further encouraged to report known or suspected instances of child abuse or neglect to an agency specified in Section 11165.9.

(c) Employers are strongly encouraged to provide their employees who are mandated reporters with training in the duties imposed by this article. This training shall include training in child abuse and neglect identification and training in child abuse and neglect reporting. Whether or not employers provide their employees with training in child abuse and neglect identification and reporting, the employers shall provide their employees who are mandated reporters with the statement required pursuant to subdivision (a) of Section 11166.5.

(d) School districts that do not train their employees specified in subdivision (a) in the duties of mandated reporters under the child abuse reporting laws shall report to the State Department of Education the reasons why this training is not provided.

(e) Unless otherwise specifically provided, the absence of training shall not excuse a mandated reporter from the duties imposed by this article.

(f) Public and private organizations are encouraged to provide their volunteers whose duties require direct contact with and supervision of children with training in the identification and reporting of child abuse and neglect.

SEC. 6. Section 11165.12 of the Penal Code is amended to read:

11165.12. As used in this article, the following definitions shall control:

(a) ''Unfounded report'' means a report that is determined by the investigator who conducted the investigation to be false, to be inherently improbable, to involve an accidental injury, or not to constitute child abuse or neglect, as defined in Section 11165.6.

(b) ''Substantiated report'' means a report that is determined by the investigator who conducted the investigation to constitute child abuse or neglect, as defined in Section 11165.6, based upon evidence that makes it more likely than not that child abuse or neglect, as defined, occurred.

(c) ''Inconclusive report'' means a report that is determined by the investigator who conducted the investigation not to be unfounded, but the findings are inconclusive and there is insufficient evidence to determine whether child abuse or neglect, as defined in Section 11165.6, has occurred.

SEC. 7. Section 11166 of the Penal Code is amended to read:

11166. (a) Except as provided in subdivision (c), a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. The mandated reporter shall make a report to the agency immediately or as soon as is practicably possible by telephone, and the mandated reporter shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. The mandated reporter may include with the report any nonprivileged documentary evidence the mandated reporter possesses relating to the incident.

(1) For the purposes of this article, ''reasonable suspicion'' means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse or neglect. For the purpose of this article, the pregnancy of a minor does not, in and of itself, constitute a basis for a reasonable suspicion of sexual abuse.

(2) The agency shall be notified and a report shall be prepared and sent even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse was discovered during an autopsy.

(3) A report made by a mandated reporter pursuant to this section shall be known as a mandated report.

(b) Any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars ($1,000) or by both that imprisonment and fine.

(c) (1) A clergy member who acquires knowledge or a reasonable suspicion of child abuse or neglect during a penitential communication is not subject to subdivision (a). For the purposes of this subdivision, ''penitential communication'' means a communication, intended to be in confidence, including, but not limited to, a sacramental confession, made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.

(2) Nothing in this subdivision shall be construed to modify or limit a clergy member's duty to report known or suspected child abuse or neglect when the clergy member is acting in some other capacity that would otherwise make the clergy member a mandated reporter.

(3) (A) On or before January 1, 2004, a clergy member or any custodian of records for the clergy member may report to an agency specified in Section 11165.9 that the clergy member or any custodian of records for the clergy member, prior to January 1, 1997, in his or her professional capacity or within the scope of his or her employment, other than during a penitential communication, acquired knowledge or had a reasonable suspicion that a child had been the victim of sexual abuse that the clergy member or any custodian of records for the clergy member did not previously report the abuse to an agency specified in Section 11165.9. The provisions of Section 11172 shall apply to all reports made pursuant to this paragraph.

(B) This paragraph shall apply even if the victim of the known or suspected abuse has reached the age of majority by the time the required report is made.

(C) The local law enforcement agency shall have jurisdiction to investigate any report of child abuse made pursuant to this paragraph even if the report is made after the victim has reached the age of majority.

(d) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional

capacity or employment, any film, photograph, videotape, negative, or slide depicting a child under the age of 16 years engaged in an act of sexual conduct, shall report the instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately, or as soon as practically possible, by telephone, and shall prepare and send a written report of it with a copy of the film, photograph, videotape, negative, or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, ''sexual conduct'' means any of the following:

(1) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals.

(2) Penetration of the vagina or rectum by any object.

(3) Masturbation for the purpose of sexual stimulation of the viewer.

(4) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.

(5) Exhibition of the genitals, pubic, or rectal areas of any person for the purpose of sexual stimulation of the viewer.

(e) Any mandated reporter who knows or reasonably suspects that the home or institution in which a child resides is unsuitable for the child because of abuse or neglect of the child shall bring the condition to the attention of the agency to which, and at the same time as, he or she makes a report of the abuse or neglect pursuant to subdivision (a).

(f) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse or neglect may report the known or suspected instance of child abuse or neglect to an agency specified in Section 11165.9.

(g) When two or more persons, who are required to report, jointly have knowledge of a known or suspected instance of child abuse or neglect, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(h) (1) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit the reporting duties, and no person making a report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with this article.

(2) The internal procedures shall not require any employee required to make reports pursuant to this article to disclose his or her identity to the employer.

(3) Reporting the information regarding a case of possible child abuse or neglect to an employer, supervisor, school principal, school counselor, coworker, or other person shall not be a substitute for making a mandated report to an agency specified in Section 11165.9.

(i) A county probation or welfare department shall immediately, or as soon as practically possible, report by telephone, fax, or electronic transmission to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse or neglect, as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare or probation department. A county probation or welfare department also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision.

(j) A law enforcement agency shall immediately, or as soon as practically possible, report by telephone to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and to the district attorney's office every known or suspected instance of child abuse or neglect reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall be reported only to the county welfare or probation department. A law enforcement agency shall report to the county welfare or probation department every known or suspected instance of child abuse or neglect reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision.

SEC. 7.5. Section 11166 of the Penal Code is amended to read:

11166. (a) Except as provided in subdivision (c), a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has

been the victim of child abuse or neglect. The mandated reporter shall make a report to the agency immediately or as soon as is practicably possible by telephone, and the mandated reporter shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. The mandated reporter may include with the report any nonprivileged documentary evidence the mandated reporter possesses relating to the incident.

(1) For the purposes of this article, ''reasonable suspicion'' means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse or neglect. For the purpose of this article, the pregnancy of a minor does not, in and of itself, constitute a basis for a reasonable suspicion of sexual abuse.

(2) The agency shall be notified and a report shall be prepared and sent even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse was discovered during an autopsy.

(3) A report made by a mandated reporter pursuant to this section shall be known as a mandated report.

(b) Any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars ($1,000) or by both that imprisonment and fine. If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until an agency specified in Section 11165.9 discovers the offense.

(c) (1) A clergy member who acquires knowledge or a reasonable suspicion of child abuse or neglect during a penitential communication is not subject to subdivision (a). For the purposes of this subdivision, ''penitential communication'' means a communication, intended to be in confidence, including, but not limited to, a sacramental confession, made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.

(2) Nothing in this subdivision shall be construed to modify or limit a clergy member's duty to report known or suspected child abuse or neglect when the clergy member is acting in some other capacity that would otherwise make the clergy member a mandated reporter.

(3) (A) On or before January 1, 2004, a clergy member or any custodian of records for the clergy member may report to an agency specified in Section 11165.9 that the clergy member or any custodian of records for the clergy member, prior to January 1, 1997, in his or her professional capacity or within the scope of his or her employment, other than during a penitential communication, acquired knowledge or had a reasonable suspicion that a child had been the victim of sexual abuse that the clergy member or any custodian of records for the clergy member did not previously report the abuse to an agency specified in Section 11165.9. The provisions of Section 11172 shall apply to all reports made pursuant to this paragraph.

(B) This paragraph shall apply even if the victim of the known or suspected abuse has reached the age of majority by the time the required report is made.

(C) The local law enforcement agency shall have jurisdiction to investigate any report of child abuse made pursuant to this paragraph even if the report is made after the victim has reached the age of majority.

(d) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, videotape, negative, or slide depicting a child under the age of 16 years engaged in an act of sexual conduct, shall report the instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately, or as soon as practicably possible, by telephone, and shall prepare and send a written report of it with a copy of the film, photograph, videotape, negative, or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, ''sexual conduct'' means any of the following:

(1) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals.

(2) Penetration of the vagina or rectum by any object.

(3) Masturbation for the purpose of sexual stimulation of the viewer.

(4) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.

(5) Exhibition of the genitals, pubic, or rectal areas of any person for the purpose of sexual stimulation of the viewer.

(e) Any mandated reporter who knows or reasonably suspects that the home or institution in which a child resides is unsuitable for the child because of abuse or neglect of the child shall bring the condition to the attention of the agency to which, and at the same time as, he or she makes a report of the abuse or neglect pursuant to subdivision (a).

(f) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse

or neglect may report the known or suspected instance of child abuse or neglect to an agency specified in Section 11165.9.

(g) When two or more persons, who are required to report, jointly have knowledge of a known or suspected instance of child abuse or neglect, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(h) (1) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit the reporting duties, and no person making a report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with this article.

(2) The internal procedures shall not require any employee required to make reports pursuant to this article to disclose his or her identity to the employer.

(3) Reporting the information regarding a case of possible child abuse or neglect to an employer, supervisor, school principal, school counselor, coworker, or other person shall not be a substitute for making a mandated report to an agency specified in Section 11165.9.

(i) A county probation or welfare department shall immediately, or as soon as practicably possible, report by telephone, fax, or electronic transmission to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse or neglect, as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare or probation department. A county probation or welfare department also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision.

(j) A law enforcement agency shall immediately, or as soon as practicably possible, report by telephone to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and to the district attorney's office every known or suspected instance of child abuse or neglect reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which

shall be reported only to the county welfare or probation department. A law enforcement agency shall report to the county welfare or probation department every known or suspected instance of child abuse or neglect reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision.

SEC. 8. Section 11166.01 of the Penal Code is amended to read:

11166.01. Any supervisor or administrator who violates paragraph (1) of subdivision (h) of Section 11166 is guilty of an infraction punishable by a fine not to exceed five thousand dollars ($5,000).

SEC. 9. Section 11166.05 of the Penal Code is amended to read:

11166.05. Any mandated reporter who has knowledge of or who reasonably suspects that a child is suffering serious emotional damage or is at a substantial risk of suffering serious emotional damage, evidenced by states of being or behavior, including, but not limited to, severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, may make a report to an agency specified in Section 11165.9.

SEC. 10. Section 11166.5 of the Penal Code is amended to read:

11166.5. (a) On and after January 1, 1985, any mandated reporter as specified in Section 11165.7, with the exception of child visitation monitors, prior to commencing his or her employment, and as a prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions. The statement shall inform the employee that he or she is a mandated reporter and inform the employee of his or her reporting obligations under Section 11166 and of his or her confidentiality rights under subdivision (d) of Section 11167. The employer shall provide a copy of Sections 11165.7, 11166, and 11167 to the employee.

On and after January 1, 1993, any person who acts as a child visitation monitor, as defined in paragraph (30) of subdivision (a) of Section 11165.7, prior to engaging in monitoring the first visit in a case, shall sign a statement on a form provided to him or her by the court which ordered the presence of that third person during the visit, to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions.

The signed statements shall be retained by the employer or the court, as the case may be. The cost of printing, distribution, and filing of these statements shall be borne by the employer or the court.

This subdivision is not applicable to persons employed by public or private youth centers, youth recreation programs, and youth organizations as members of the support staff or maintenance staff and who do not work with, observe, or have knowledge of children as part of their official duties.

(b) On and after January 1, 1986, when a person is issued a state license or certificate to engage in a profession or occupation, the members of which are required to make a report pursuant to Section 11166, the state agency issuing the license or certificate shall send a statement substantially similar to the one contained in subdivision (a) to the person at the same time as it transmits the document indicating licensure or certification to the person. In addition to the requirements contained in subdivision (a), the statement also shall indicate that failure to comply with the requirements of Section 11166 is a misdemeanor, punishable by up to six months in a county jail, by a fine of one thousand dollars ($1,000), or by both that imprisonment and fine.

(c) As an alternative to the procedure required by subdivision (b), a state agency may cause the required statement to be printed on all application forms for a license or certificate printed on or after January 1, 1986.

(d) On and after January 1, 1993, any child visitation monitor, as defined in paragraph (30) of subdivision (a) of Section 11165.7, who desires to act in that capacity shall have received training in the duties imposed by this article, including training in child abuse identification and child abuse reporting. The person, prior to engaging in monitoring the first visit in a case, shall sign a statement on a form provided to him or her by the court which ordered the presence of that third person during the visit, to the effect that he or she has received this training. This statement may be included in the statement required by subdivision (a) or it may be a separate statement. This statement shall be filed, along with the statement required by subdivision (a), in the court file of the case for which the visitation monitoring is being provided.

SEC. 10.5. Section 11166.5 of the Penal Code is amended to read:

11166.5. (a) On and after January 1, 1985, any mandated reporter as specified in Section 11165.7, with the exception of child visitation monitors, prior to commencing his or her employment, and as a prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions. The statement shall inform the employee that he or she is a mandated reporter and inform the employee of his or her reporting

obligations under Section 11166 and of his or her confidentiality rights under subdivision (d) of Section 11167. The employer shall provide a copy of Sections 11165.7, 11166, and 11167 to the employee.

On and after January 1, 1993, any person who acts as a child visitation monitor, as defined in paragraph (30) of subdivision (a) of Section 11165.7, prior to engaging in monitoring the first visit in a case, shall sign a statement on a form provided to him or her by the court which ordered the presence of that third person during the visit, to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions.

The signed statements shall be retained by the employer or the court, as the case may be. The cost of printing, distribution, and filing of these statements shall be borne by the employer or the court.

This subdivision is not applicable to persons employed by public or private youth centers, youth recreation programs, and youth organizations as members of the support staff or maintenance staff and who do not work with, observe, or have knowledge of children as part of their official duties.

(b) On and after January 1, 1986, when a person is issued a state license or certificate to engage in a profession or occupation, the members of which are required to make a report pursuant to Section 11166, the state agency issuing the license or certificate shall send a statement substantially similar to the one contained in subdivision (a) to the person at the same time as it transmits the document indicating licensure or certification to the person. In addition to the requirements contained in subdivision (a), the statement also shall indicate that failure to comply with the requirements of Section 11166 is a misdemeanor, punishable by up to six months in a county jail, by a fine of one thousand dollars ($1,000), or by both that imprisonment and fine.

(c) As an alternative to the procedure required by subdivision (b), a state agency may cause the required statement to be printed on all application forms for a license or certificate printed on or after January 1, 1986.

(d) On and after January 1, 1993, any child visitation monitor, as defined in paragraph (30) of subdivision (a) of Section 11165.7, who desires to act in that capacity shall have received training in the duties imposed by this article, including training in child abuse identification and child abuse reporting. The person, prior to engaging in monitoring the first visit in a case, shall sign a statement on a form provided to him or her by the court which ordered the presence of that third person during the visit, to the effect that he or she has received this training. This statement may be included in the statement required by subdivision (a) or it may be a separate statement. This statement shall be filed, along

with the statement required by subdivision (a), in the court file of the case for which the visitation monitoring is being provided.

(e) Any person providing services to a minor child, as described in paragraph (37) of subdivision (a) of Section 11165.7, shall not be required to make a report pursuant to Section 11166 unless that person has received training, or instructional materials in the appropriate language, on the duties imposed by this article, including identifying and reporting child abuse and neglect.

SEC. 11. Section 11166.7 of the Penal Code is amended and renumbered to read:

11174.32. (a) Each county may establish an interagency child death team to assist local agencies in identifying and reviewing suspicious child deaths and facilitating communication among persons who perform autopsies and the various persons and agencies involved in child abuse or neglect cases. Interagency child death teams have been used successfully to ensure that incidents of child abuse or neglect are recognized and other siblings and nonoffending family members receive the appropriate services in cases where a child has expired.

(b) Each county may develop a protocol that may be used as a guideline by persons performing autopsies on children to assist coroners and other persons who perform autopsies in the identification of child abuse or neglect, in the determination of whether child abuse or neglect contributed to death or whether child abuse or neglect had occurred prior to but was not the actual cause of death, and in the proper written reporting procedures for child abuse or neglect, including the designation of the cause and mode of death.

(c) In developing an interagency child death team and an autopsy protocol, each county, working in consultation with local members of the California State Coroner's Association and county child abuse prevention coordinating councils, may solicit suggestions and final comments from persons, including, but not limited to, the following:

(1) Experts in the field of forensic pathology.

(2) Pediatricians with expertise in child abuse.

(3) Coroners and medical examiners.

(4) Criminologists.

(5) District attorneys.

(6) Child protective services staff.

(7) Law enforcement personnel.

(8) Representatives of local agencies which are involved with child abuse or neglect reporting.

(9) County health department staff who deals with children's health issues.

(10) Local professional associations of persons described in paragraphs (1) to (9), inclusive.

SEC. 12. Section 11166.8 of the Penal Code is amended and renumbered to read:

11174.33. Subject to available funding, the Attorney General, working with the California Consortium of Child Abuse Councils, shall develop a protocol for the development and implementation of interagency child death teams for use by counties, which shall include relevant procedures for both urban and rural counties. The protocol shall be designed to facilitate communication among persons who perform autopsies and the various persons and agencies involved in child abuse or neglect cases so that incidents of child abuse or neglect are recognized and other siblings and nonoffending family members receive the appropriate services in cases where a child has expired. The protocol shall be completed on or before January 1, 1991.

SEC. 13. Section 11166.9 of the Penal Code is amended and renumbered to read:

11174.34. (a) (1) The purpose of this section shall be to coordinate and integrate state and local efforts to address fatal child abuse or neglect, and to create a body of information to prevent child deaths.

(2) It is the intent of the Legislature that the California State Child Death Review Council, the Department of Justice, the State Department of Social Services, the State Department of Health Services, and state and local child death review teams shall share data and other information necessary from the Department of Justice Child Abuse Central Index and Supplemental Homicide File, the State Department of Health Services Vital Statistics and the Department of Social Services Child Welfare Services/Case Management System files to establish accurate information on the nature and extent of child abuse or neglect related fatalities in California as those documents relate to child fatality cases. Further, it is the intent of the Legislature to ensure that records of child abuse or neglect related fatalities are entered into the State Department of Social Services, Child Welfare Services/Case Management System. It is also the intent that training and technical assistance be provided to child death review teams and professionals in the child protection system regarding multiagency case review.

(b) (1) It shall be the duty of the California State Child Death Review Council to oversee the statewide coordination and integration of state and local efforts to address fatal child abuse or neglect and to create a body of information to prevent child deaths. The Department of Justice, the State Department of Social Services, the State Department of Health Services, the California Coroner's Association, the County Welfare Directors Association, Prevent Child Abuse California, the California Homicide Investigators Association, the agency or agencies designated by the Director of Finance pursuant to Section 13820, the Inter-Agency Council on Child Abuse and Neglect/National Center on Child Fatality

Review, the California Conference of Local Health Officers, the California Conference of Local Directors of Maternal, Child, and Adolescent Health, the California Conference of Local Health Department Nursing Directors, the California District Attorneys Association, and at least three regional representatives, chosen by the other members of the council, working collaboratively for the purposes of this section, shall be known as the California State Child Death Review Council. The council shall select a chairperson or cochairpersons from the members.

(2) The Department of Justice is hereby authorized to carry out the purposes of this section by coordinating council activities and working collaboratively with the agencies and organizations in paragraph (1), and may consult with other representatives of other agencies and private organizations, to help accomplish the purpose of this section.

(c) Meetings of the agencies and organizations involved shall be convened by a representative of the Department of Justice. All meetings convened between the Department of Justice and any organizations required to carry out the purpose of this section shall take place in this state. There shall be a minimum of four meetings per calendar year.

(d) To accomplish the purpose of this section, the Department of Justice and agencies and organizations involved shall engage in the following activities:

(1) Analyze and interpret state and local data on child death in an annual report to be submitted to local child death review teams with copies to the Governor and the Legislature, no later than July 1 each year. Copies of the report shall also be distributed to public officials in the state who deal with child abuse issues and to those agencies responsible for child death investigation in each county. The report shall contain, but not be limited to, information provided by state agencies and the county child death review teams for the preceding year.

The state data shall include the Department of Justice Child Abuse Central Index and Supplemental Homicide File, the State Department of Health Services Vital Statistics, and the State Department of Social Services Child Welfare Services/Case Management System.

(2) In conjunction with the agency or agencies designated by the Director of Finance pursuant to Section 13820, coordinate statewide and local training for county death review teams and the members of the teams, including, but not limited to, training in the application of the interagency child death investigation protocols and procedures established under Sections 11166.7 and 11166.8 to identify child deaths associated with abuse or neglect.

(e) The State Department of Health Services, in collaboration with the California State Child Death Review Council, shall design, test and implement a statewide child abuse or neglect fatality tracking system

incorporating information collected by local child death review teams. The department shall:

(1) Establish a minimum case selection criteria and review protocols of local child death review teams.

(2) Develop a standard child death review form with a minimum core set of data elements to be used by local child death review teams, and collect and analyze that data.

(3) Establish procedural safeguards in order to maintain appropriate confidentiality and integrity of the data.

(4) Conduct annual reviews to reconcile data reported to the State Department of Health Services Vital Statistics, Department of Justice Homicide Files and Child Abuse Central Index, and the State Department of Social Services Child Welfare Services/Case Management System data systems, with data provided from local child death review teams.

(5) Provide technical assistance to local child death review teams in implementing and maintaining the tracking system.

(6) This subdivision shall become operative on July 1, 2000, and shall be implemented only to the extent that funds are appropriated for its purposes in the Budget Act.

(f) Local child death review teams shall participate in a statewide child abuse or neglect fatalities monitoring system by:

(1) Meeting the minimum standard protocols set forth by the State Department of Health Services in collaboration with the California State Child Death Review Council.

(2) Using the standard data form to submit information on child abuse or neglect fatalities in a timely manner established by the State Department of Health Services.

(g) The California State Child Death Review Council shall monitor the implementation of the monitoring system and incorporate the results and findings of the system and review into an annual report.

(h) The Department of Justice shall direct the creation, maintenance, updating, and distribution electronically and by paper, of a statewide child death review team directory, which shall contain the names of the members of the agencies and private organizations participating under this section, and the members of local child death review teams and local liaisons to those teams. The department shall work in collaboration with members of the California State Child Death Review Council to develop a directory of professional experts, resources, and information from relevant agencies and organizations and local child death review teams, and to facilitate regional working relationships among teams. The Department of Justice shall maintain and update these directories annually.

(i) The agencies or private organizations participating under this section shall participate without reimbursement from the state. Costs incurred by participants for travel or per diem shall be borne by the participant agency or organization. The participants shall be responsible for collecting and compiling information to be included in the annual report. The Department of Justice shall be responsible for printing and distributing the annual report using available funds and existing resources.

(j) The agency or agencies designated by the Director of Finance pursuant to Section 13820, in coordination with the State Department of Social Services, the Department of Justice, and the California State Child Death Review Council shall contract with state or nationally recognized organizations in the area of child death review to conduct statewide training and technical assistance for local child death review teams and relevant organizations, develop standardized definitions for fatal child abuse or neglect, develop protocols for the investigation of fatal child abuse or neglect, and address relevant issues such as grief and mourning, data collection, training for medical personnel in the identification of child abuse or neglect fatalities, domestic violence fatality review, and other related topics and programs. The provisions of this subdivision shall only be implemented to the extent that the agency or agencies designated by the Director of Finance pursuant to Section 13820 can absorb the costs of implementation within its current funding, or to the extent that funds are appropriated for its purposes in the Budget Act.

(k) Law enforcement and child welfare agencies shall cross-report all cases of child death suspected to be related to child abuse or neglect whether or not the deceased child has any known surviving siblings.

(*l*) County child welfare agencies shall create a record in the Child Welfare Services/Case Management System (CWS/CMS) on all cases of child death suspected to be related to child abuse or neglect, whether or not the deceased child has any known surviving siblings. Upon notification that the death was determined not to be related to child abuse or neglect, the child welfare agency shall enter that information into the Child Welfare Services/Case Management System.

SEC. 14. Section 11166.95 of the Penal Code is amended and renumbered to read:

11174.35. The State Department of Social Services shall work with state and local child death review teams and child protective services agencies in order to identify child death cases that were, or should have been, reported to or by county child protective services agencies. Findings made pursuant to this section shall be used to determine the extent of child abuse or neglect fatalities occurring in families known to child protective services agencies and to define child welfare training

needs for reporting, cross-reporting, data integration, and involvement by child protective services agencies in multiagency review in child deaths. The State Department of Social Services, the State Department of Health Services, and the Department of Justice shall develop a plan to track and maintain data on child deaths from abuse or neglect, and submit this plan, not later than December 1, 1997, to the Senate Committee on Health and Human Services, the Assembly Committee on Human Services, and the chairs of the fiscal committees of the Legislature.

SEC. 15. 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 the name, business address, and telephone number of the mandated reporter; the capacity that makes the person a mandated reporter; the child's name; and the information that gave rise to the reasonable suspicion of child abuse or neglect and the source or sources of that information. If a report is made, the following information, if known, shall also be included in the report: the child's address, present location, and, if applicable, school, grade, and class; the names, addresses, and telephone numbers of the child's parents or guardians; 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) Persons who may report pursuant to subdivision (f) of Section 11166 are not required to include their names.

SEC. 15.5. 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 the name, business address, and telephone number of the mandated reporter; the capacity that makes the person a mandated reporter; the child's name; and the information that gave rise to the reasonable suspicion of child abuse or neglect and the source or sources of that information. If a report is made, the following information, if known, shall also be included in the report: the child's address, present location, and, if applicable, school, grade, and class; the names, addresses, and telephone numbers of the child's parents or guardians; 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 a manner that is consistent with laws protecting the identity of the reporter under this article.

(f) Persons who may report pursuant to subdivision (f) of Section 11166 are not required to include their names.

SEC. 16. Section 11167.5 of the Penal Code is amended to read:

11167.5. (a) The reports required by Sections 11166 and 11166.2, and child abuse or neglect investigative reports that result in a summary report being filed with the Department of Justice pursuant to subdivision (a) of Section 11169 shall be confidential and may be disclosed only as provided in subdivision (b). Any violation of the confidentiality provided by this article is a misdemeanor punishable by imprisonment in a county jail not to exceed six months, by a fine of five hundred dollars ($500), or by both that imprisonment and fine.

(b) Reports of suspected child abuse or neglect and information contained therein may be disclosed only to the following:

(1) Persons or agencies to whom disclosure of the identity of the reporting party is permitted under Section 11167.

(2) Persons or agencies to whom disclosure of information is permitted under subdivision (b) of Section 11170 or subdivision (a) of Section 11170.5.

(3) Persons or agencies with whom investigations of child abuse or neglect are coordinated under the regulations promulgated under Section 11174.

(4) Multidisciplinary personnel teams as defined in subdivision (d) of Section 18951 of the Welfare and Institutions Code.

(5) Persons or agencies responsible for the licensing of facilities which care for children, as specified in Section 11165.7.

(6) The State Department of Social Services or any county licensing agency which has contracted with the state, as specified in paragraph (4) of subdivision (b) of Section 11170, when an individual has applied for a community care license or child day care license, or for employment in an out-of-home care facility, or when a complaint alleges child abuse or neglect by an operator or employee of an out-of-home care facility.

(7) Hospital scan teams. As used in this paragraph, ‘‘hospital scan team’’ means a team of three or more persons established by a hospital, or two or more hospitals in the same county, consisting of health care professionals and representatives of law enforcement and child protective services, the members of which are engaged in the identification of child abuse or neglect. The disclosure authorized by this section includes disclosure among all hospital scan teams.

(8) Coroners and medical examiners when conducting a postmortem examination of a child.

(9) The Board of Prison Terms, who may subpoena an employee of a county welfare department who can provide relevant evidence and reports that both (A) are not unfounded, pursuant to Section 11165.12, and (B) concern only the current incidents upon which parole revocation proceedings are pending against a parolee charged with child abuse or neglect. The reports and information shall be confidential pursuant to subdivision (d) of Section 11167.

(10) Personnel from an agency responsible for making a placement of a child pursuant to Section 361.3 of, and Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of, the Welfare and Institutions Code.

(11) Persons who have been identified by the Department of Justice as listed in the Child Abuse Central Index pursuant to paragraph (6) of subdivision (b) of Section 11170 or subdivision (c) of Section 11170, or persons who have verified with the Department of Justice that they are listed in the Child Abuse Central Index as provided in subdivision (e) of Section 11170. Disclosure under this paragraph is required notwithstanding the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code. Nothing in this paragraph shall preclude a submitting agency prior to disclosure from redacting any information necessary to maintain confidentiality as required by law.

(12) Out-of-state law enforcement agencies conducting an investigation of child abuse or neglect only when an agency makes the request for reports of suspected child abuse or neglect in writing and on official letterhead, identifying the suspected abuser or victim by name. The request shall be signed by the department supervisor of the requesting law enforcement agency. The written request shall cite the out-of-state statute or interstate compact provision that requires that the information contained within these reports is to be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and shall cite the criminal penalties for unlawful disclosure provided by the requesting state or the applicable interstate compact provision. In the absence of both (A) a specific out-of-state statute or interstate compact provision that requires that the information contained within these reports be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and (B) criminal penalties equivalent to the penalties in California for unlawful disclosure, access shall be denied.

(13) Each chairperson of a county child death review team, or his or her designee, to whom disclosure of information is permitted under this article, relating to the death of one or more children and any prior child

abuse or neglect investigation reports maintained involving the same victim, siblings, or suspects. Local child death review teams may share any relevant information regarding case reviews involving child death with other child death review teams.

(c) Authorized persons within county health departments shall be permitted to receive copies of any reports made by health practitioners, as defined in paragraphs (21) to (28), inclusive, of subdivision (a) of Section 11165.7, and pursuant to Section 11165.13, and copies of assessments completed pursuant to Sections 123600 and 123605 of the Health and Safety Code, to the extent permitted by federal law. Any information received pursuant to this subdivision is protected by subdivision (e).

(d) Nothing in this section requires the Department of Justice to disclose information contained in records maintained under Section 11170 or under the regulations promulgated pursuant to Section 11174, except as otherwise provided in this article.

(e) This section shall not be interpreted to allow disclosure of any reports or records relevant to the reports of child abuse or neglect if the disclosure would be prohibited by any other provisions of state or federal law applicable to the reports or records relevant to the reports of child abuse or neglect.

SEC. 17. Section 11169 of the Penal Code is amended to read:

11169. (a) An agency specified in Section 11165.9 shall forward to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse or severe neglect which is determined not to be unfounded, other than cases coming within subdivision (b) of Section 11165.2. An agency shall not forward a report to the Department of Justice unless it has conducted an active investigation and determined that the report is not unfounded, as defined in Section 11165.12. If a report has previously been filed which subsequently proves to be unfounded, the Department of Justice shall be notified in writing of that fact and shall not retain the report. The reports required by this section shall be in a form approved by the Department of Justice and may be sent by fax or electronic transmission. An agency specified in Section 11165.9 receiving a written report from another agency specified in Section 11165.9 shall not send that report to the Department of Justice.

(b) At the time an agency specified in Section 11165.9 forwards a report in writing to the Department of Justice pursuant to subdivision (a), the agency shall also notify in writing the known or suspected child abuser that he or she has been reported to the Child Abuse Central Index. The notice required by this section shall be in a form approved by the Department of Justice. The requirements of this subdivision shall apply with respect to reports forwarded to the department on or after the date on which this subdivision becomes operative.

(c) Agencies shall retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice pursuant to subdivision (a) for the same period of time that the information is required to be maintained on the Child Abuse Central Index pursuant to this section and subdivision (a) of Section 11170. Nothing in this section precludes an agency from retaining the reports for a longer period of time if required by law.

(d) The immunity provisions of Section 11172 shall not apply to the submission of a report by an agency pursuant to this section. However, nothing in this section shall be construed to alter or diminish any other immunity provisions of state or federal law.

SEC. 18. Section 11170 of the Penal Code is amended to read:

11170. (a) (1) The Department of Justice shall maintain an index of all reports of child abuse and severe neglect submitted pursuant to Section 11169. The index shall be continually updated by the department and shall not contain any reports that are determined to be unfounded. The department may adopt rules governing recordkeeping and reporting pursuant to this article.

(2) The department shall act only as a repository of reports of suspected child abuse and severe neglect to be maintained in the Child Abuse Central Index pursuant to paragraph (1). The submitting agencies are responsible for the accuracy, completeness, and retention of the reports described in this section. The department shall be responsible for ensuring that the Child Abuse Central Index accurately reflects the report it receives from the submitting agency.

(3) Information from an inconclusive or unsubstantiated report filed pursuant to subdivision (a) of Section 11169 shall be deleted from the Child Abuse Central Index after 10 years if no subsequent report concerning the same suspected child abuser is received within that time period. If a subsequent report is received within that 10-year period, information from any prior report, as well as any subsequently filed report, shall be maintained on the Child Abuse Central Index for a period of 10 years from the time the most recent report is received by the department.

(b) (1) The Department of Justice shall immediately notify an agency that submits a report pursuant to Section 11169, or a district attorney who requests notification, of any information maintained pursuant to subdivision (a) that is relevant to the known or suspected instance of child abuse or severe neglect reported by the agency. The agency shall make that information available to the reporting medical practitioner, child custodian, guardian ad litem appointed under Section 326, or counsel appointed under Section 317 or 318 of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she is

treating or investigating a case of known or suspected child abuse or severe neglect.

(2) When a report is made pursuant to subdivision (a) of Section 11166, the investigating agency, upon completion of the investigation or after there has been a final disposition in the matter, shall inform the person required to report of the results of the investigation and of any action the agency is taking with regard to the child or family.

(3) The Department of Justice shall make available to a law enforcement agency, county welfare department, or county probation department that is conducting a child abuse investigation relevant information contained in the index.

(4) The department shall make available to the State Department of Social Services or to any county licensing agency that has contracted with the state for the performance of licensing duties information regarding a known or suspected child abuser maintained pursuant to this section and subdivision (a) of Section 11169 concerning any person who is an applicant for licensure or any adult who resides or is employed in the home of an applicant for licensure or who is an applicant for employment in a position having supervisorial or disciplinary power over a child or children, or who will provide 24-hour care for a child or children in a residential home or facility, pursuant to Section 1522.1 or 1596.877 of the Health and Safety Code, or Section 8714, 8802, 8912, or 9000 of the Family Code.

(5) For purposes of child death review, the Department of Justice shall make available to the chairperson, or the chairperson's designee, for each county child death review team, or the State Child Death Review Council, information maintained in the Child Abuse Central Index pursuant to subdivision (a) of Section 11170 relating to the death of one or more children and any prior child abuse or neglect investigation reports maintained involving the same victims, siblings, or suspects. Local child death review teams may share any relevant information regarding case reviews involving child death with other child death review teams.

(6) The department shall make available to investigative agencies or probation officers, or court investigators acting pursuant to Section 1513 of the Probate Code, responsible for placing children or assessing the possible placement of children pursuant to Article 6 (commencing with Section 300), Article 7 (commencing with Section 305), Article 10 (commencing with Section 360), or Article 14 (commencing with Section 601) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, Article 2 (commencing with Section 1510) or Article 3 (commencing with Section 1540) of Chapter 1 of Part 2 of Division 4 of the Probate Code, information regarding a known or suspected child abuser contained in the index concerning any adult residing in the home

where the child may be placed, when this information is requested for purposes of ensuring that the placement is in the best interests of the child. Upon receipt of relevant information concerning child abuse or neglect investigation reports contained in the index from the Department of Justice pursuant to this subdivision, the agency or court investigator shall notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index. The notification shall include the name of the reporting agency and the date of the report.

(7) The Department of Justice shall make available to a government agency conducting a background investigation pursuant to Section 1031 of the Government Code of an applicant seeking employment as a peace officer, as defined in Section 830, information regarding a known or suspected child abuser maintained pursuant to this section concerning the applicant.

(8) (A) Persons or agencies, as specified in subdivision (b), if investigating a case of known or suspected child abuse or neglect, or the State Department of Social Services or any county licensing agency pursuant to paragraph (4), or an investigative agency, probation officer, or court investigator responsible for placing children or assessing the possible placement of children pursuant to paragraph (6), or a government agency conducting a background investigation of an applicant seeking employment as a peace officer pursuant to paragraph (7), to whom disclosure of any information maintained pursuant to subdivision (a) is authorized, are responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, licensing, placement of a child, or employment as a peace officer.

(B) If Child Abuse Central Index information is requested by an agency for the temporary placement of a child in an emergency situation pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, the department is exempt from the requirements of Section 1798.18 of the Civil Code if compliance would cause a delay in providing an expedited response to the agency's inquiry and if further delay in placement may be detrimental to the child.

(9) (A) Whenever information contained in the Department of Justice files is furnished as the result of an application for employment or licensing pursuant to paragraph (4), the Department of Justice may charge the person or entity making the request a fee. The fee shall not exceed the reasonable costs to the department of providing the information. The only increase shall be at a rate not to exceed the

legislatively approved cost-of-living adjustment for the department. In no case shall the fee exceed fifteen dollars ($15).

(B) All moneys received by the department pursuant to this section to process trustline applications for purposes of Chapter 3.35 (commencing with Section 1596.60) of Division 2 of the Health and Safety Code shall be deposited in a special account in the General Fund that is hereby established and named the Department of Justice Child Abuse Fund. Moneys in the fund shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred to process trustline automated child abuse or neglect system checks pursuant to this section.

(C) All moneys, other than that described in subparagraph (B), received by the department pursuant to this paragraph shall be deposited in a special account in the General Fund which is hereby created and named the Department of Justice Sexual Habitual Offender Fund. The funds shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to Chapter 9.5 (commencing with Section 13885) and Chapter 10 (commencing with Section 13890) of Title 6 of Part 4, and the DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1), and for maintenance and improvements to the statewide Sexual Habitual Offender Program and the DNA offender identification file (CAL-DNA) authorized by Chapter 9.5 (commencing with Section 13885) of Title 6 of Part 4 and the DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1).

(c) The Department of Justice shall make available to any agency responsible for placing children pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, upon request, relevant information concerning child abuse or neglect reports contained in the index, when making a placement with a responsible relative pursuant to Sections 281.5, 305, and 361.3 of the Welfare and Institutions Code. Upon receipt of relevant information concerning child abuse or neglect reports contained in the index from the Department of Justice pursuant to this subdivision, the agency shall also notify in writing the person listed in the Child Abuse Central Index that he or she is in the index. The notification shall include the location of the original investigative report and the submitting agency. The notification shall be submitted to the person listed at the same time that all other parties are notified of the information, and no later than the actual judicial proceeding that determines placement.

If Child Abuse Central Index information is requested by an agency for the placement of a child with a responsible relative in an emergency

situation pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, the department is exempt from the requirements of Section 1798.18 of the Civil Code if compliance would cause a delay in providing an expedited response to the child protective agency's inquiry and if further delay in placement may be detrimental to the child.

(d) The department shall make available any information maintained pursuant to subdivision (a) to out-of-state law enforcement agencies conducting investigations of known or suspected child abuse or neglect only when an agency makes the request for information in writing and on official letterhead, identifying the suspected abuser or victim by name. The request shall be signed by the department supervisor of the requesting law enforcement agency. The written requests shall cite the out-of-state statute or interstate compact provision that requires that the information contained within these reports shall be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and shall cite the criminal penalties for unlawful disclosure of any confidential information provided by the requesting state or the applicable interstate compact provision. In the absence of a specified out-of-state statute or interstate compact provision that requires that the information contained within these reports shall be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and criminal penalties equivalent to the penalties in California for unlawful disclosure, access shall be denied.

(e) (1) Any person may determine if he or she is listed in the Child Abuse Central Index by making a request in writing to the Department of Justice. The request shall be notarized and include the person's name, address, date of birth, and either a social security number or a California identification number. Upon receipt of a notarized request, the Department of Justice shall make available to the requesting person information identifying the date of the report and the submitting agency. The requesting person is responsible for obtaining the investigative report from the submitting agency pursuant to paragraph (11) of subdivision (b) of Section 11167.5.

(2) No person or agency shall require or request another person to furnish a copy of a record concerning himself or herself, or notification that a record concerning himself or herself exists or does not exist, pursuant to paragraph (1) of this subdivision.

(f) If a person is listed in the Child Abuse Central Index only as a victim of child abuse or neglect, and that person is 18 years of age or older, that person may have his or her name removed from the index by making a written request to the Department of Justice. The request shall be notarized and include the person's name, address, social security number, and date of birth.

SEC. 19. Section 11170.5 of the Penal Code is amended to read:

11170.5. (a) Notwithstanding paragraph (4) of subdivision (b) of Section 11170, the Department of Justice shall make available to a licensed adoption agency, as defined in Section 8530 of the Family Code, information regarding a known or suspected child abuser maintained in the Child Abuse Central Index, pursuant to subdivision (a) of Section 11170, concerning any person who has submitted to the agency an application for adoption.

(b) A licensed adoption agency, to which disclosure of any information pursuant to subdivision (a) is authorized, is responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed and the sufficiency of the evidence for making decisions when evaluating an application for adoption.

(c) Whenever information contained in the Department of Justice files is furnished as the result of an application for adoption pursuant to subdivision (a), the Department of Justice may charge the agency making the request a fee. The fee shall not exceed the reasonable costs to the department of providing the information. The only increase shall be at a rate not to exceed the legislatively approved cost-of-living adjustment for the department. In no case shall the fee exceed fifteen dollars ($15).

All moneys received by the department pursuant to this subdivision shall be deposited in the Department of Justice Sexual Habitual Offender Fund pursuant to subparagraph (C) of paragraph (9) of subdivision (b) of Section 11170.

SEC. 20. Section 11170.6 of the Penal Code is repealed.

SEC. 21. Section 11172 of the Penal Code is amended to read:

11172. (a) No mandated reporter shall be civilly or criminally liable for any report required or authorized by this article, and this immunity shall apply even if the mandated reporter acquired the knowledge or reasonable suspicion of child abuse or neglect outside of his or her professional capacity or outside the scope of his or her employment. Any other person reporting a known or suspected instance of child abuse or neglect shall not incur civil or criminal liability as a result of any report authorized by this article unless it can be proven that a false report was made and the person knew that the report was false or was made with reckless disregard of the truth or falsity of the report, and any person who makes a report of child abuse or neglect known to be false or with reckless disregard of the truth or falsity of the report is liable for any damages caused. No person required to make a report pursuant to this article, nor any person taking photographs at his or her direction, shall incur any civil or criminal liability for taking photographs of a suspected victim of child abuse or neglect, or causing photographs to be taken of

a suspected victim of child abuse or neglect, without parental consent, or for disseminating the photographs with the reports required by this article. However, this section shall not be construed to grant immunity from this liability with respect to any other use of the photographs.

(b) Any person, who, pursuant to a request from a government agency investigating a report of suspected child abuse or neglect, provides the requesting agency with access to the victim of a known or suspected instance of child abuse or neglect shall not incur civil or criminal liability as a result of providing that access.

(c) The Legislature finds that even though it has provided immunity from liability to persons required or authorized to make reports pursuant to this article, that immunity does not eliminate the possibility that actions may be brought against those persons based upon required or authorized reports. In order to further limit the financial hardship that those persons may incur as a result of fulfilling their legal responsibilities, it is necessary that they not be unfairly burdened by legal fees incurred in defending those actions. Therefore, a mandated reporter may present a claim to the State Board of Control for reasonable attorney's fees and costs incurred in any action against that person on the basis of making a report required or authorized by this article if the court has dismissed the action upon a demurrer or motion for summary judgment made by that person, or if he or she prevails in the action. The State Board of Control shall allow that claim if the requirements of this subdivision are met, and the claim shall be paid from an appropriation to be made for that purpose. Attorney's fees awarded pursuant to this section shall not exceed an hourly rate greater than the rate charged by the Attorney General of the State of California at the time the award is made and shall not exceed an aggregate amount of fifty thousand dollars ($50,000).

This subdivision shall not apply if a public entity has provided for the defense of the action pursuant to Section 995 of the Government Code.

(d) A court may award attorney's fees and costs to a commercial film and photographic print processor when a suit is brought against the processor because of a disclosure mandated by this article and the court finds this suit to be frivolous.

SEC. 22. An article heading is added immediately preceding Section 11174.32 of Chapter 2 of Title 1 of Part 4 of the Penal Code, to read:

Article 2.6. Child Death Review Teams

SEC. 23. Section 11174.4 of the Penal Code, as added by Chapter 1064 of the Statutes of 2002, is amended and renumbered to read:

11174.31. (a) There is hereby created the Child Abuse and Neglect Reporting Act Task Force for the purpose of reviewing the act and addressing the following:

(1) The value of the Child Abuse Central Index in protecting children.

(2) Changes needed with respect to the Child Abuse and Neglect Reporting Act, including but not limited to, the operation of the Child Abuse Central Index.

(b) The task force shall be chaired by a designee of the Attorney General.

(c) The members of the task force shall serve at the pleasure of their respective appointing authority, without compensation, except for reimbursement of necessary expenses. The task force shall be composed of the following representatives:

(1) One representative of the Department of Justice, in addition to the chairperson.

(2) One representative of the State Department of Social Services.

(3) One representative of the County Welfare Directors' Association.

(4) One representative of the California State Child Death Review Council.

(5) Two representatives of local law enforcement, one selected by the California State Sheriffs' Association and one selected by the California Police Chiefs' Association.

(6) One representative of the Judicial Council.

(7) Two representatives of the State Bar of California, one of whom practices criminal defense and one of whom represents children in criminal and civil proceedings.

(8) Two representatives of recognized organizations involved in privacy advocacy, civil liberties advocacy, or legal aid, one of whom is appointed by the Speaker of the Assembly and one of whom is appointed by the Senate Committee on Rules.

(9) Two members of the public, one of whom is appointed by the Speaker of the Assembly and one of whom is appointed by the Senate Committee on Rules.

(10) Two representatives appointed by the Governor.

(d) The Department of Justice shall provide staff and support for the task force.

(e) The task force shall meet at least once every two months. Subcommittees may be formed and meet as necessary. All meetings shall be open to the public.

(f) On or before January 1, 2004, the task force shall report its findings and recommendations to the Governor, the Attorney General, the Speaker of the Assembly, and the Senate Committee on Rules. At the request of any member, the report may include minority findings and recommendations.

(g) This section shall become inoperative on March 1, 2004, and is repealed as of January 1, 2005, unless a later enacted statute, that becomes operative before January 1, 2005, deletes or extends that date.

SEC. 24. Section 16513 of the Welfare and Institutions Code is amended to read:

16513. Anyone participating in good faith in the making of a report pursuant to this chapter shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from the report.

SEC. 25. Section 5.5 of this bill incorporates amendments to Section 11165.7 of the Penal Code proposed by both this bill and AB 2531. 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 11165.7 of the Penal Code, and (3) this bill is enacted after AB 2531, in which case Section 5 of this bill shall not become operative.

SEC. 26. Section 7.5 of this bill incorporates amendments to Section 11166 of the Penal Code proposed by both this bill and AB 20. 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 11166 of the Penal Code, and (3) this bill is enacted after AB 20, in which case Section 7 of this bill shall not become operative.

SEC. 27. Section 10.5 of this bill incorporates amendments to Section 11166.5 of the Penal Code proposed by both this bill and AB 2531. 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 11166.5 of the Penal Code, and (3) this bill is enacted after AB 2531, in which case Section 10 of this bill shall not become operative.

SEC. 28. Section 15.5 of this bill incorporates amendments to Section 11167 of the Penal Code proposed by both this bill and AB 2749. 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 11167 of the Penal Code, and (3) this bill is enacted after AB 2749, in which case Section 15 of this bill shall not become operative.

SEC. 29. The Commission on State Mandates may deny a claim by a local agency or school district if, after a hearing, the commission finds that the statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agency or school district, or includes additional revenue that was specifically intended to fund the cost of the state mandate in an amount sufficient to fund the cost of the state mandate.

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CHAPTER 843

An act to add Chapter 32 (commencing with Section 22947) to Division 8 of the Business and Professions Code, relating to business.

[Approved by Governor September 28, 2004. Filed with Secretary of State September 28, 2004.]

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

SECTION 1. It is the intent of the Legislature that this act protect California consumers from the use of spyware and malware that is deceptively or surreptitiously installed on their computers. Because the threats posed by these practices change over time, it is the intent of the Legislature to revise the provisions in this act as needed to fully protect consumers from additional unfair and deceptive practices and to address future innovations in computer technology and practices.

SEC. 2. Chapter 32 (commencing with Section 22947) is added to Division 8 of the Business and Professions Code, to read:

CHAPTER 32. CONSUMER PROTECTION AGAINST COMPUTER SPYWARE ACT

22947. This chapter shall be known as and may be cited as the Consumer Protection Against Computer Spyware Act.

22947.1. For purposes of this chapter, the following terms have the following meanings:

(a) ''Advertisement'' means a communication, the primary purpose of which is the commercial promotion of a commercial product or service, including content on an Internet Web site operated for a commercial purpose.

(b) ''Authorized user,'' with respect to a computer, means a person who owns or is authorized by the owner or lessee to use the computer. An ''authorized user'' does not include a person or entity that has obtained authorization to use the computer solely through the use of an end user license agreement.

(c) ''Computer software'' means a sequence of instructions written in any programming language that is executed on a computer.

(d) ''Computer virus'' means a computer program or other set of instructions that is designed to degrade the performance of or disable a computer or computer network and is designed to have the ability to replicate itself on other computers or computer networks without the authorization of the owners of those computers or computer networks.

(e) ''Consumer'' means an individual who resides in this state and who uses the computer in question primarily for personal, family, or household purposes.

(f) ''Damage'' means any significant impairment to the integrity or availability of data, software, a system, or information.

(g) ''Execute,'' when used with respect to computer software, means the performance of the functions or the carrying out of the instructions of the computer software.

(h) ''Intentionally deceptive'' means any of the following:

(1) By means of an intentionally and materially false or fraudulent statement.

(2) By means of a statement or description that intentionally omits or misrepresents material information in order to deceive the consumer.

(3) By means of an intentional and material failure to provide any notice to an authorized user regarding the download or installation of software in order to deceive the consumer.

(i) ''Internet'' means the global information system that is logically linked together by a globally unique address space based on the Internet Protocol (IP), or its subsequent extensions, and that is able to support communications using the Transmission Control Protocol/Internet Protocol (TCP/IP) suite, or its subsequent extensions, or other IP-compatible protocols, and that provides, uses, or makes accessible, either publicly or privately, high level services layered on the communications and related infrastructure described in this subdivision.

(j) ''Person'' means any individual, partnership, corporation, limited liability company, or other organization, or any combination thereof.

(k) ''Personally identifiable information'' means any of the following:

(1) First name or first initial in combination with last name.

(2) Credit or debit card numbers or other financial account numbers.

(3) A password or personal identification number required to access an identified financial account.

(4) Social Security number.

(5) Any of the following information in a form that personally identifies an authorized user:

(A) Account balances.

(B) Overdraft history.

(C) Payment history.

(D) A history of Web sites visited.

(E) Home address.

(F) Work address.

(G) A record of a purchase or purchases.

22947.2. A person or entity that is not an authorized user, as defined in Section 22947.1, shall not, with actual knowledge, with conscious

avoidance of actual knowledge, or willfully, cause computer software to be copied onto the computer of a consumer in this state and use the software to do any of the following:

(a) Modify, through intentionally deceptive means, any of the following settings related to the computer's access to, or use of, the Internet:

(1) The page that appears when an authorized user launches an Internet browser or similar software program used to access and navigate the Internet.

(2) The default provider or Web proxy the authorized user uses to access or search the Internet.

(3) The authorized user's list of bookmarks used to access Web pages.

(b) Collect, through intentionally deceptive means, personally identifiable information that meets any of the following criteria:

(1) It is collected through the use of a keystroke-logging function that records all keystrokes made by an authorized user who uses the computer and transfers that information from the computer to another person.

(2) It includes all or substantially all of the Web sites visited by an authorized user, other than Web sites of the provider of the software, if the computer software was installed in a manner designed to conceal from all authorized users of the computer the fact that the software is being installed.

(3) It is a data element described in paragraph (2), (3), or (4) of subdivision (k) of Section 22947.1, or in subparagraph (A) or (B) of paragraph (5) of subdivision (k) of Section 22947.1, that is extracted from the consumer's computer hard drive for a purpose wholly unrelated to any of the purposes of the software or service described to an authorized user.

(c) Prevent, without the authorization of an authorized user, through intentionally deceptive means, an authorized user's reasonable efforts to block the installation of, or to disable, software, by causing software that the authorized user has properly removed or disabled to automatically reinstall or reactivate on the computer without the authorization of an authorized user.

(d) Intentionally misrepresent that software will be uninstalled or disabled by an authorized user's action, with knowledge that the software will not be so uninstalled or disabled.

(e) Through intentionally deceptive means, remove, disable, or render inoperative security, antispyware, or antivirus software installed on the computer.

22947.3. A person or entity that is not an authorized user, as defined in Section 22947.1, shall not, with actual knowledge, with conscious avoidance of actual knowledge, or willfully, cause computer software to

be copied onto the computer of a consumer in this state and use the software to do any of the following:

(a) Take control of the consumer's computer by doing any of the following:

(1) Transmitting or relaying commercial electronic mail or a computer virus from the consumer's computer, where the transmission or relaying is initiated by a person other than the authorized user and without the authorization of an authorized user.

(2) Accessing or using the consumer's modem or Internet service for the purpose of causing damage to the consumer's computer or of causing an authorized user to incur financial charges for a service that is not authorized by an authorized user.

(3) Using the consumer's computer as part of an activity performed by a group of computers for the purpose of causing damage to another computer, including, but not limited to, launching a denial of service attack.

(4) Opening multiple, sequential, stand-alone advertisements in the consumer's Internet browser without the authorization of an authorized user and with knowledge that a reasonable computer user cannot close the advertisements without turning off the computer or closing the consumer's Internet browser.

(b) Modify any of the following settings related to the computer's access to, or use of, the Internet:

(1) An authorized user's security or other settings that protect information about the authorized user for the purpose of stealing personal information of an authorized user.

(2) The security settings of the computer for the purpose of causing damage to one or more computers.

(c) Prevent, without the authorization of an authorized user, an authorized user's reasonable efforts to block the installation of, or to disable, software, by doing any of the following:

(1) Presenting the authorized user with an option to decline installation of software with knowledge that, when the option is selected by the authorized user, the installation nevertheless proceeds.

(2) Falsely representing that software has been disabled.

(d) Nothing in this section shall apply to any monitoring of, or interaction with, a subscriber's Internet or other network connection or service, or a protected computer, by a telecommunications carrier, cable operator, computer hardware or software provider, or provider of information service or interactive computer service for network or computer security purposes, diagnostics, technical support, repair, authorized updates of software or system firmware, authorized remote system management, or detection or prevention of the unauthorized use of or fraudulent or other illegal activities in connection with a network,

service, or computer software, including scanning for and removing software proscribed under this chapter.

22947.4. (a) A person or entity, who is not an authorized user, as defined in Section 22947.1, shall not do any of the following with regard to the computer of a consumer in this state:

(1) Induce an authorized user to install a software component onto the computer by intentionally misrepresenting that installing software is necessary for security or privacy reasons or in order to open, view, or play a particular type of content.

(2) Deceptively causing the copying and execution on the computer of a computer software component with the intent of causing an authorized user to use the component in a way that violates any other provision of this section.

(b) Nothing in this section shall apply to any monitoring of, or interaction with, a subscriber's Internet or other network connection or service, or a protected computer, by a telecommunications carrier, cable operator, computer hardware or software provider, or provider of information service or interactive computer service for network or computer security purposes, diagnostics, technical support, repair, authorized updates of software or system firmware, authorized remote system management, or detection or prevention of the unauthorized use of or fraudulent or other illegal activities in connection with a network, service, or computer software, including scanning for and removing software proscribed under this chapter.

22947.5. It is the intent of the Legislature that this chapter is a matter of statewide concern. This chapter supersedes and preempts all rules, regulations, codes, ordinances, and other laws adopted by a city, county, city and county, municipality, or local agency regarding spyware and notices to consumers from computer software providers regarding information collection.

22947.6. The provisions of this chapter are severable. If any provision of this chapter or its application is held invalid, that invalidity shall not affect any other provision or application that can be given effect without the invalid provision or application.

CHAPTER 844

An act to add Section 19582.5 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 28, 2004. Filed with Secretary of State September 28, 2004.]

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

SECTION 1. Section 19582.5 is added to the Revenue and Taxation Code, to read:

19582.5. (a) Notwithstanding any other law, a taxpayer filing as either a single taxpayer or as a head of household whose total income for the taxable year is one hundred thousand dollars ($100,000) or less, and taxpayers filing a joint return or a taxpayer filing as a qualifying widow or widower whose total income is two hundred thousand dollars ($200,000) or less, shall have the option to use Form 540 2EZ, or its successor form, as prepared by the Franchise Tax Board, to reflect the provisions of this section.

(b) For purposes of this section, ''total income'' means taxable wages, dividends, interest, and pension income.

(c) The Legislative Analyst, in consultation with the Franchise Tax Board, shall conduct a study on the impact of the revised Form 540 2EZ and shall report to the Legislature, no later than January 1, 2008, on the following:

(1) The number of filers using the revised Form 540 2EZ.

(2) The effectiveness of the revised Form 540 2EZ in the simplification of tax preparation for the taxpayers eligible to use that form.

(3) The impact the revised Form 540 2EZ has on the Franchise Tax Board's administration of the Personal Income Tax Law (Part 10 (commencing with Section 17001)).

SEC. 2. It is the intent of the Legislature that this act is only intended to adjust the income limitations that govern the use of the Franchise Tax Board Form 540 2EZ, or its successor form. It is the intent of the Legislature that Form 540 2EZ, or its successor form, should only be revised to allow those persons, who, but for the existing income restrictions on the amount of, and the nature of, the income received, would otherwise be eligible to use Form 540 2EZ.

CHAPTER 845

An act to amend Section 15200.5 of, and to add Section 11410 to, the Welfare and Institutions Code, relating to child welfare, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 2004. Filed with Secretary of State September 28, 2004.]

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

SECTION 1. Section 11410 is added to the Welfare and Institutions Code, to read:

11410. (a) The department shall amend the foster care state plan required under Subtitle IV-E (commencing with Section 470) of the federal Social Security Act (42 U.S.C. Sec. 670 et seq.), to authorize counties that elect to subsidize child care for foster parents to use federal matching funds under Subtitle IV-E for that purpose.

(b) When approved by the federal government, counties electing to administer the Foster Parent Child Care Program shall follow the guidelines developed by the State Department of Social Services.

(c) Federal funds used by a county pursuant to this section shall be matched only by county funds pursuant to Section 15200.5.

SEC. 2. Section 15200.5 of the Welfare and Institutions Code is amended to read:

15200.5. Notwithstanding the provisions of subdivision (c) of Section 15200, the county shall be responsible for 100 percent of the nonfederal share of payments to needy children eligible for AFDC-FC under the conditions of Section 11402.5, and for payments made to foster parents pursuant to Section 11410.

SEC. 3. Of the amount appropriated in Item 5180-151-0001 of Section 2.00 of the Budget Act of 2004 (Chapter 208 of the Statutes of 2004), $91,440,000 shall be provided to counties to fund additional child welfare service activities and shall be allocated based on child welfare services caseload and county unit costs. However, no county shall receive less than $100,000. These funds shall be expressly targeted for emergency response, family reunification, family maintenance, and permanent placement services, and shall be used to supplement, not to supplant, child welfare services funds. A county is not required to provide a match of the funds received pursuant to this provision if the county appropriates the required full match for the county's child welfare services program exclusive of the funds received pursuant to this provision. These funds are available only to counties that have certified that they are fully utilizing the Child Welfare Services/Case Management System (CWS/CMS) or have entered into an agreed-upon plan with the State Department of Social Services outlining the steps that will be taken to achieve full utilization. The department shall reallocate any funds that counties choose not to accept under this provision to other counties based on the allocation formula specified in this provision. The department, in collaboration with the County Welfare Directors Association and representatives from labor groups representing social workers, shall develop the definition of full utilization of the CWS/CMS, the method for measuring full utilization, the process for the

state and counties to work together to move counties toward full utilization, and measurements of progress toward full utilization.

SEC. 4. The sum of ten million dollars ($10,000,000) is hereby reappropriated from subdivision (a) of Schedule (1) of Item 5180-151-0001 of the Budget Act of 2003 (Chapter 157 of the Statutes of 2003) for transfer to Schedule (1) of Item 5180-151-0001 of the Budget Act of 2004 (Chapter 208 of the Statutes of 2004) to augment child welfare services basic county allocations.

SEC. 5. The sum of seven million one hundred forty-five thousand dollars ($7,145,000) is hereby appropriated from subdivision (a) of Schedule (2) of Item 5180-111-0001 of Section 2.00 of the Budget Act of 2003 (Chapter 157 of the Statutes of 2003) for transfer to Schedule (1) of Item 5180-151-0001 of Section 2.00 of the Budget Act of 2004 (Chapter 208 of the Statutes of 2004) to augment child welfare services basic county allocations.

SEC. 6. The Department of Finance may reduce the amount of the reappropriation in Section 5 of this act by a corresponding amount of 2004–05 fiscal year savings if the savings are redirected to child welfare services basic county allocation for the 2004–05 fiscal year from either the Child Welfare Services/Case Management System or the Child Welfare Services Redesign activities. The Department of Finance shall notify the fiscal and budget committees of both houses of the Legislature 30 days prior to reducing the appropriation.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that sufficient funding exists during the entire 2004–05 fiscal year in order to provide important child welfare services, it is necessary that this act take effect immediately.

CHAPTER 846

An act to amend Section 49423 of the Education Code, relating to pupil health, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 2004. Filed with Secretary of State September 28, 2004.]

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

SECTION 1. Section 49423 of the Education Code is amended to read:

49423. (a) Notwithstanding Section 49422, any pupil who is required to take, during the regular schoolday, medication prescribed for him or her by a physician and surgeon, may be assisted by the school nurse or other designated school personnel or may carry and self-administer prescription auto-injectable epinephrine if the school district receives the appropriate written statements identified in subdivision (b).

(b) (1) In order for a pupil to be assisted by a school nurse or other designated school personnel pursuant to subdivision (a), the school district shall obtain both a written statement from the physician detailing the name of the medication, method, amount, and time schedules by which the medication is to be taken and a written statement from the parent, foster parent, or guardian of the pupil indicating the desire that the school district assist the pupil in the matters set forth in the statement of the physician.

(2) In order for a pupil to carry and self-administer prescription auto-injectable epinephrine pursuant to subdivision (a), the school district shall obtain both a written statement from the physician and surgeon detailing the name of the medication, method, amount, and time schedules by which the medication is to be taken, and confirming that the pupil is able to self-administer auto-injectable epinephrine, and a written statement from the parent, foster parent, or guardian of the pupil consenting to the self-administration, providing a release for the school nurse or other designated school personnel to consult with the health care provider of the pupil regarding any questions that may arise with regard to the medication, and releasing the school district and school personnel from civil liability if the self-adminsitering pupil suffers an adverse reaction as a result of self-administering medication pursuant to this paragraph.

(3) The written statements specified in this subdivision shall be provided at least annually and more frequently if the medication, dosage, frequency of administration, or reason for administration changes.

(c) A pupil may be subject to disciplinary action pursuant to Section 48900 if that pupil uses auto-injectable epinephrine in a manner other than as prescribed.

SEC. 2. This act shall become operative only if Assembly Bill 2132 of the 2003–04 Regular Session is enacted and becomes effective on or before January 1, 2005.

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, at the earliest possible time, for the protection of the health of pupils and prevent deaths, it is necessary that this act take effect immediately.

CHAPTER 847

An act to amend Sections 270 and 739.3 of the Public Utilities Code, relating to telecommunications, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 2004. Filed with Secretary of State September 28, 2004.]

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

SECTION 1. 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 are the proceeds of rates and are held in trust for the benefit of ratepayers and to compensate telephone corporations for their costs of providing universal service. Moneys in the funds may only be expended pursuant to this chapter and upon appropriation in the annual Budget Act or upon supplemental appropriation. 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.

(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. 2. 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 are the proceeds of rates and are held in trust for the benefit of ratepayers and to compensate telephone corporations for their costs of providing universal service. Moneys in the funds may only be expended pursuant to this chapter and upon appropriation in the annual Budget Act or upon supplemental appropriation.

(c) Moneys in each fund may not be appropriated, or in any other manner transferred or otherwise diverted, to any other fund or entity.

(d) This section shall become operative on January 1, 2006.

SEC. 3. Section 739.3 of the Public Utilities Code is amended to read:

739.3. (a) The commission shall develop, implement, and maintain a suitable program to establish a fair and equitable local rate structure aided by universal service rate support to small independent telephone

corporations serving rural and small metropolitan areas. The purpose of the program shall be to promote the goals of universal telephone service and to reduce any disparity in the rates charged by those companies.

(b) For purposes of this section, small independent telephone corporations means those independent telephone corporations serving rural areas, as determined by the commission.

(c) The commission shall develop, implement, and maintain a suitable, competitively neutral, and broadbased program to establish a fair and equitable local rate support structure aided by universal service rate support to telephone corporations serving areas where the cost of providing services exceeds rates charged by providers, as determined by the commission. The commission shall develop and implement the program on or before October 1, 1996. The purpose of the program shall be to promote the goals of universal telephone service and to reduce any disparity in the rates charged by those companies. Except as otherwise explicitly provided, this subdivision does not limit the manner in which the commission collects and disburses funds, and does not limit the manner in which it may include or exclude the revenue of contributing entities in structuring the program.

(d) The commission shall structure the programs required by this section so that any charge imposed to promote the goals of universal service reasonably equals the value of the benefits of universal service to contributing entities and their subscribers.

(e) The commission shall investigate reducing the level of universal service rate support, or elimination of universal service rate support in service areas with demonstrated competition.

(f) This section shall remain in effect until January 1, 2009, and as of that date is repealed, unless a later enacted statute that becomes effective on or before January 1, 2009, deletes or extends that date.

SEC. 4. The Public Utilities Commission shall, by January 1, 2006, conduct a review of the program established pursuant to subdivision (c) of Section 739.3 of the Public Utilities Code and of the California High-Cost Fund-B Administrative Committee Fund, to accomplish both of the following:

(a) Adjust universal service rate support payments to reflect updated operating costs.

(b) Evaluate whether universal service rate support levels can be reduced while still meeting the goals of this program.

SEC. 5. There is hereby appropriated from the California Teleconnect Fund Administrative Committee Fund to the Public Utilities Commission, seventeen million nine hundred seventy-four thousand dollars ($17,974,000) for the purpose of transferring funds to telephone corporations providing discounted rates to qualifying schools, libraries, hospitals, health clinics, and community organizations and

authorized to receive these funds pursuant to Chapter 1.5 (commencing with Section 270) of Part 1 of Division 1.

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:

The authority to expend money from the California Teleconnect Fund Administrative Committee Fund was deleted from the Budget Act for fiscal year 2004–05. The California Teleconnect Fund Administrative Committee Fund provides funding to compensate telephone corporations for providing service at discounted rates to qualifying schools, libraries, hospitals, health clinics, and community organizations. In order to provide sufficient revenues for the telephone corporations authorized to receive these funds pursuant to Chapter 1.5 (commencing with Section 270) of Part 1 of Division 1 of the Public Utilities Code, so that those telephone corporations may continue to provide teleconnect services, it is necessary that this act take effect immediately.

CHAPTER 848

An act to add Section 2282.5 to the Business and Professions Code, relating to medicine.

[Approved by Governor September 28, 2004. Filed with Secretary of State September 28, 2004.]

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

SECTION 1. (a) The Legislature finds and declares that providing quality medical care in hospitals depends on the mutual accountability, interdependence, and responsibility of the medical staff and the hospital governing board for the proper performance of their respective obligations.

(b) The Legislature further finds and declares that the governing board of a hospital must act to protect the quality of medical care provided and the competency of its medical staff, and to ensure the responsible governance of the hospital in the event that the medical staff fails in any of its substantive duties or responsibilities. Nothing in this act shall be construed to undermine this authority. The final authority of the hospital governing board may be exercised for the responsible governance of the hospital or for the conduct of the business affairs of the hospital; however, that final authority may only be exercised with a

reasonable and good faith belief that the medical staff has failed to fulfill a substantive duty or responsibility in matters pertaining to the quality of patient care. It would be a violation of the medical staff's self-governance and independent rights for the hospital governing board to assume a duty or responsibility of the medical staff precipitously, unreasonably, or in bad faith.

(c) Finally, the Legislature finds and declares that the specific actions that would constitute bad faith or unreasonable action on the part of either the medical staff or hospital governing board will always be fact-specific and cannot be precisely described in statute. The provisions set forth in this act do nothing more than provide for the basic independent rights and responsibilities of a self-governing medical staff. Ultimately, a successful relationship between a hospital's medical staff and governing board depends on the mutual respect of each for the rights and responsibilities of the other.

SEC. 2. Section 2282.5 is added to the Business and Professions Code, to read:

2282.5. (a) The medical staff's right of self-governance shall include, but not be limited to, all of the following:

(1) Establishing, in medical staff bylaws, rules, or regulations, criteria and standards, consistent with Article 11 (commencing with Section 800) of Chapter 1 of Division 2, for medical staff membership and privileges, and enforcing those criteria and standards.

(2) Establishing, in medical staff bylaws, rules, or regulations, clinical criteria and standards to oversee and manage quality assurance, utilization review, and other medical staff activities including, but not limited to, periodic meetings of the medical staff and its committees and departments and review and analysis of patient medical records.

(3) Selecting and removing medical staff officers.

(4) Assessing medical staff dues and utilizing the medical staff dues as appropriate for the purposes of the medical staff.

(5) The ability to retain and be represented by independent legal counsel at the expense of the medical staff, provided that medical staff at the University of California have the right to retain and be represented by independent legal counsel at the expense of the medical staff upon approval by the Regents of the University of California or their designee in accordance with the bylaws of the Regents, which approval shall not be unreasonably denied.

(6) Initiating, developing, and adopting medical staff bylaws, rules, and regulations, and amendments thereto, subject to the approval of the hospital governing board, which approval shall not be unreasonably withheld.

(b) The medical staff bylaws shall not interfere with the independent rights of the medical staff to do any of the following, but shall set forth the procedures for:

(1) Selecting and removing medical staff officers.

(2) Assessing medical staff dues and utilizing the medical staff dues as appropriate for the purposes of the medical staff.

(3) The ability to retain and be represented by independent legal counsel at the expense of the medical staff.

(c) With respect to any dispute arising under this section, the medical staff and the hospital governing board shall meet and confer in good faith to resolve the dispute. Whenever any person or entity has engaged in or is about to engage in any acts or practices that hinder, restrict, or otherwise obstruct the ability of the medical staff to exercise its rights, obligations, or responsibilities under this section, the superior court of any county, on application of the medical staff, and after determining that reasonable efforts, including reasonable administrative remedies provided in the medical staff bylaws, rules, or regulations, have failed to resolve the dispute, may issue an injunction, writ of mandate, or other appropriate order. Proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

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 1325 of the 2003–04 Regular Session is enacted and becomes effective on or before January 1, 2005.

CHAPTER 849

An act to amend Sections 7575 and 7634 of, to add Section 7635.5 to, and to add Article 1.5 (commencing with Section 7645) to Chapter 4 of Part 3 of Division 12 of, the Family Code, relating to paternity.

[Approved by Governor September 28, 2004. Filed with Secretary of State September 28, 2004.]

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

SECTION 1. Section 7575 of the Family Code is amended to read:

7575. (a) Either parent may rescind the voluntary declaration of paternity by filing a rescission form with the Department of Child Support Services within 60 days of the date of execution of the declaration by the attesting father or attesting mother, whichever signature is later, unless a court order for custody, visitation, or child support has been entered in an action in which the signatory seeking to rescind was a party. The Department of Child Support Services shall develop a form to be used by parents to rescind the declaration of paternity and instruction on how to complete and file the rescission with the Department of Child Support Services. The form shall include a declaration under penalty of perjury completed by the person filing the rescission form that certifies that a copy of the rescission form was sent by any form of mail requiring a return receipt to the other person who signed the voluntary declaration of paternity. A copy of the return receipt shall be attached to the rescission form when filed with the Department of Child Support Services. The form and instructions shall be written in simple, easy to understand language and shall be made available at the local family support office and the office of local registrar of births and deaths. The department shall, upon written request, provide to a court or commissioner a copy of any rescission form filed with the department that is relevant to proceedings before the court or commissioner.

(b) (1) Notwithstanding Section 7573, if the court finds that the conclusions of all of the experts based upon the results of the genetic tests performed pursuant to Chapter 2 (commencing with Section 7550) are that the man who signed the voluntary declaration is not the father of the child, the court may set aside the voluntary declaration of paternity unless the court determines that denial of the action to set aside the voluntary declaration of paternity is in the best interest of the child, after consideration of all of the following factors:

(A) The age of the child.

(B) The length of time since the execution of the voluntary declaration of paternity by the man who signed the voluntary declaration.

(C) The nature, duration, and quality of any relationship between the man who signed the voluntary declaration and the child, including the duration and frequency of any time periods during which the child and the man who signed the voluntary declaration resided in the same household or enjoyed a parent-child relationship.

(D) The request of the man who signed the voluntary declaration that the parent-child relationship continue.

(E) Notice by the biological father of the child that he does not oppose preservation of the relationship between the man who signed the voluntary declaration and the child.

(F) The benefit or detriment to the child in establishing the biological parentage of the child.

(G) Whether the conduct of the man who signed the voluntary declaration has impaired the ability to ascertain the identity of, or get support from, the biological father.

(H) Additional factors deemed by the court to be relevant to its determination of the best interest of the child.

(2) If the court denies the action, the court shall state on the record the basis for the denial of the action and any supporting facts.

(3) (A) The notice of motion for genetic tests under this section may be filed not later than two years from the date of the child's birth by a local child support agency, the mother, the man who signed the voluntary declaration as the child's father, or in an action to determine the existence or nonexistence of the father and child relationship pursuant to Section 7630 or in any action to establish an order for child custody, visitation, or child support based upon the voluntary declaration of paternity.

(B) The local child support agency's authority under this subdivision is limited to those circumstances where there is a conflict between a voluntary acknowledgment of paternity and a judgment of paternity or a conflict between two or more voluntary acknowledgments of paternity.

(4) The notice of motion for genetic tests pursuant to this section shall be supported by a declaration under oath submitted by the moving party stating the factual basis for putting the issue of paternity before the court.

(c) (1) Nothing in this chapter shall be construed to prejudice or bar the rights of either parent to file an action or motion to set aside the voluntary declaration of paternity on any of the grounds described in, and within the time limits specified in, Section 473 of the Code of Civil Procedure. If the action or motion to set aside a judgment is required to be filed within a specified time period under Section 473 of the Code of Civil Procedure, the period within which the action or motion to set aside the voluntary declaration of paternity must be filed shall commence on the date that the court makes an initial order for custody, visitation, or child support based upon a voluntary declaration of paternity.

(2) The parent or local child support agency seeking to set aside the voluntary declaration of paternity shall have the burden of proof.

(3) Any order for custody, visitation, or child support shall remain in effect until the court determines that the voluntary declaration of paternity should be set aside, subject to the court's power to modify the orders as otherwise provided by law.

(4) Nothing in this section is intended to restrict a court from acting as a court of equity.

(5) If the voluntary declaration of paternity is set aside pursuant to paragraph (1), the court shall order that the mother, child, and alleged father submit to genetic tests pursuant to Chapter 2 (commencing with Section 7550). If the court finds that the conclusions of all the experts, as disclosed by the evidence based upon the genetic tests, are that the person who executed the voluntary declaration of paternity is not the father of the child, the question of paternity shall be resolved accordingly. If the person who executed the declaration as the father of the child is not excluded as a possible father, the question of paternity shall be resolved as otherwise provided by law. If the person who executed the declaration of paternity is ultimately determined to be the father of the child, any child support that accrued under an order based upon the voluntary declaration of paternity shall remain due and owing.

(6) The Judicial Council shall develop the forms and procedures necessary to effectuate this subdivision.

SEC. 2. Section 7634 of the Family Code is amended to read:

7634. (a) The local child support agency may, in the local child support agency's discretion, bring an action under this chapter in any case in which the local child support agency believes it to be appropriate.

(b) The Department of Child Support Services may review the current practices of service of process used by the local child support agencies pursuant to subdivision (a), and may develop methods to increase the number of persons served using personal delivery.

SEC. 3. Section 7635.5 is added to the Family Code, to read:

7635.5. In any action brought pursuant to this article, if the alleged father is present in court for the action, the court shall inform the alleged father of his right to have genetic testing performed to determine if he is the biological father of the child. The court shall further inform the alleged father of his right to move to set aside or vacate a judgment of paternity pursuant to Section 7646 within two years of the date he received notice of the action to establish paternity, and that after that time has expired he may not move to set aside or vacate the judgment of paternity, regardless of whether genetic testing shows him not to be the biological father of the child.

SEC. 4. Article 1.5 (commencing with Section 7645) is added to Chapter 4 of Part 3 of Division 12 of the Family Code, to read:

Article 1.5. Setting Aside or Vacating Judgment of Paternity

7645. For purposes of this article, the following definitions shall apply:

(a) ''Child'' means the child of a previously established father, as determined by the superior court in a judgment that is the subject of a motion brought pursuant to this article, or as a matter of law.

(b) ''Judgment'' means a judgment, order, or decree entered in a court of this state that establishes paternity, including a determination of paternity made pursuant to a petition filed under Section 300, 601, or 602 of the Welfare and Institutions Code, or a voluntary declaration of paternity. For purposes of this article, ''judgment'' does not include a judgment in any action for marital dissolution, legal separation, or nullity.

(c) ''Previously established father'' means a person identified as the father of a child in a judgment that is the subject of a motion brought pursuant to this article.

(d) ''Previously established mother'' means a person identified as the mother of a child in a judgment that is the subject of a motion brought pursuant to this article.

7646. (a) Notwithstanding any other provision of law, a judgment establishing paternity may be set aside or vacated upon a motion by the previously established mother of a child, the previously established father of a child, the child, or the legal representative of any of these persons if genetic testing indicates that the previously established father of a child is not the biological father of the child. The motion shall be brought within one of the following time periods:

(1) Within a two-year period commencing with the date on which the previously established father knew or should have known of a judgment that established him as the father of the child or commencing with the date the previously established father knew or should have known of the existence of an action to adjudicate the issue of paternity, whichever is first, except as provided in paragraph (2) or (3) of this subdivision.

(2) Within a two-year period commencing with the date of the child's birth if paternity was established by a voluntary declaration of paternity. Nothing in this paragraph shall bar any rights under subdivision (c) of Section 7575.

(3) In the case of any previously established father who is the legal father as a result of a default judgment as of the effective date of this section, within a two-year period commencing with the enactment of this section.

(b) Subdivision (a) does not apply if the child is presumed to be a child of a marriage pursuant to Section 7540.

7647. (a) A court may grant a motion to set aside or vacate a judgment establishing paternity only if all of the following conditions are met:

(1) The motion is filed in a court of proper venue.

(2) The motion contains, at a minimum, all of the following information, if known:

(A) The legal name, age, county of residence, and residence address of the child.

(B) The names, mailing addresses, and counties of residence, or, if deceased, the date and place of death, of the following persons:

(i) The previously established father and the previously established mother, and the biological mother and father of the child.

(ii) The guardian of the child, if any.

(iii) Any person who has physical custody of the child.

(iv) The guardian ad litem of the child, if any, as appointed pursuant to Section 7647.5.

(C) A declaration that the person filing the motion believes that the previously established father is not the biological father of the child, the specific reasons for this belief, and a declaration that the person desires that the motion be granted. The moving party is not required to present evidence of a paternity test indicating that the previously established father is not the biological father of the child in order to bring this motion pursuant to Section 7646.

(D) A declaration that the marital presumption set forth in Section 7540 does not apply.

(3) The court finds that the conclusions of the expert, as described in Section 7552, and as supported by the evidence, are that the previously established father is not the biological father of the child.

(b) The motion shall include a proof of service upon the following persons, excluding the person bringing the motion:

(1) The previously established mother.

(2) The previously established father.

(3) The local child support agency, if services are being provided to the child pursuant to Title IV-D or IV-E of the Social Security Act (42 U.S.C. Sec. 651 et seq. and 42 U.S.C. Sec. 670 et seq.).

(4) The child's guardian ad litem, if any.

7647.5. A guardian ad litem may be appointed for the child to represent the best interests of the child in an action brought pursuant to this article.

7647.7. Any genetic testing used to support the motion to set aside or vacate shall be conducted in accordance with Section 7552. The court shall, at the request of any person authorized to make a motion pursuant to this article, or may upon its own motion, order genetic testing to assist the court in making a determination whether the previously established father is the biological father of the child.

7648. If the court finds that the conclusions of all of the experts, based upon the results of genetic tests performed pursuant to Chapter 2 (commencing with Section 7550) of Part 2, indicate that the previously established father is not the biological father of the child, the court may, nevertheless, deny the motion if it determines that denial of the motion is in the best interest of the child, after consideration of the following factors:

(a) The age of the child.

(b) The length of time since the entry of the judgment establishing paternity.

(c) The nature, duration, and quality of any relationship between the previously established father and the child, including the duration and frequency of any time periods during which the child and the previously established father resided in the same household or enjoyed a parent-child relationship.

(d) The request of the previously established father that the parent-child relationship continue.

(e) Notice by the biological father of the child that he does not oppose preservation of the relationship between the previously established father and the child.

(f) The benefit or detriment to the child in establishing the biological parentage of the child.

(g) Whether the conduct of the previously established father has impaired the ability to ascertain the identity of, or get support from, the biological father.

(h) Additional factors deemed by the court to be relevant to its determination of the best interest of the child.

7648.1. If the court denies a motion pursuant to Section 7648, the court shall state on the record the basis for the denial of that motion and any supporting facts.

7648.2. (a) This section applies only to cases where support enforcement services are being provided by a local child support agency pursuant to Section 17400.

(b) Upon receipt of any motion brought pursuant to Section 7646, the local child support agency may issue an administrative order requiring the mother, child, and the previously established father to submit to genetic testing if all of the conditions of paragraphs (1) and (2) of subdivision (a) of Section 7647 are satisfied.

(c) The local child support agency shall pay the costs of any genetic tests that are ordered under subdivision (b) or are ordered by a court for cases in which the local child support agency is providing services under Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.).

(d) Nothing in this section prohibits any person who has been ordered by a local child support agency to submit to genetic tests pursuant to this section from filing a notice of motion with the court seeking relief from the local child support agency's order to submit to genetic tests. In that event, the court shall resolve the issue of whether genetic tests should be ordered as provided in Section 7647.7. If any person refuses to submit to the tests after receipt of the administrative order pursuant to this section and fails to seek relief from the court from the administrative order either prior to the scheduled tests or within 10 days after the tests

are scheduled, the court may resolve the question of paternity against that person or enforce the administrative order if the rights of others or the interest of justice so require.

7648.3. A court may not issue an order setting aside or vacating a judgment establishing paternity pursuant to this article under any of the following circumstances:

(a) The judgment was made or entered by a tribunal of another state, even if the enforcement of that judgment is sought in this state.

(b) The judgment was made or entered in this state and genetic tests were conducted prior to the entry of the judgment which did not exclude the previously established father as the biological father of the child.

7648.4. Notwithstanding any other provision of law, if the court grants a motion to set aside or vacate a paternity judgment pursuant to this article, the court shall vacate any order for child support and arrearages issued on the basis of that previous judgment of paternity. The previously established father has no right of reimbursement for any amount of support paid prior to the granting of the motion.

7648.8. This article does not establish a basis for termination of any adoption, and does not affect any obligation of an adoptive parent to an adoptive child.

7648.9. This article does not establish a basis for setting aside or vacating a judgment establishing paternity with regard to a child conceived by artificial insemination pursuant to Section 7613 or a child conceived pursuant to a surrogacy agreement.

7649. Nothing in this article shall limit the rights and remedies available under any other provision of law with regard to setting aside or vacating a judgment of paternity or a voluntary declaration of paternity.

7649.5. Notwithstanding any other provision of this article, a distribution from the estate of a decedent or payment made by a trustee, insurance company, pension fund, or any other person or entity that was made in good faith reliance on a judgment establishing paternity that is final for purposes of direct appeal, may not be set aside or subject to direct or collateral attack because of the entry of an order setting aside or vacating a judgment under this article. An estate, trust, personal representative, trustee, or any other person or entity that made that distribution or payment may not incur any liability to any person because of the distribution or payment or because of the entry of an order under this article.

SEC. 5. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 850

An act to add and repeal Article 6.6 (commencing with Section 14199) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor September 28, 2004. Filed with Secretary of State September 28, 2004.]

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

SECTION 1. Article 6.6 (commencing with Section 14199) is added to Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 6.6. HIV/AIDS Pharmacy Pilot Program

14199. The department shall establish a pilot program to evaluate the provision of medication therapy management services for people with HIV/AIDS to be effective January 1, 2005, for services rendered on or after September 1, 2004.

14199.1. For purposes of this article, ''medication therapy management'' means a distinct service or group of services that optimize therapeutic outcomes for individual patients. Medication therapy management services are independent of, but can occur in conjunction with, the provision of a medication product.

14199.2. (a) The pilot program provided for under this article shall provide the necessary information to assess the effectiveness of pharmacist care in improving health outcomes for HIV/AIDS patients.

(b) The department shall implement an HIV/AIDS-related medication therapy management service pilot project in no more than 10 pharmacies.

(c) The selection of the pharmacy providers shall be based on all of the following:

(1) Percentage of HIV/AIDS patients serviced by the pharmacy. More than 90 percent of the total patients serviced by the pharmacy in the months of May, June, and July 2004, must have been HIV/AIDS patients.

(2) Ability of the pharmacy to immediately provide specialized services. The provider shall be required to establish specialized services with capability to implement all statutorily mandated services on the implementation date of the project. The pharmacy shall provide all the services listed in subdivision (e).

(3) All specialized services shall be rendered by a qualified pharmacist or other health care provider operating within his or her scope of practice. The department shall develop, in consultation with pharmacy providers, the appropriate professional qualifications needed by the pharmacists rendering services, including any continuing education requirements.

(d) The department shall select the first pharmacies that apply and meet the criteria specified in subdivision (c) for the pilot program.

(e) Pharmacies that participate in this pilot program shall provide the following services:

(1) Patient-specific and individualized services provided directly by a pharmacist to the patient, or in limited circumstances, the patient's caregiver. These services are distinct from generalized patient education and information activities already required by law and provided for in the professional fee for dispensing.

(2) Face-to-face interaction between the patient or caregiver and the pharmacist during delivery of medication therapy management services. When barriers to face-to-face communication exist, patients shall have equitable access to appropriate alternative delivery methods.

(3) Pharmacists and other qualified health care providers to identify patients who should receive medication therapy management services.

(f) The department shall consult with the pilot program pharmacies to establish appropriate outcome measures and the required timeframes for reporting those measures, which in no case shall be less than annually. The department shall retain the ability to require additional outcome measures during the course of the project.

(g) The medication therapy management services shall be based on the individual patient's needs and may include, but are not limited to, the following:

(1) Performing or obtaining necessary assessments of the patient's health status.

(2) Formulating a medication treatment plan.

(3) Selecting, initiating, modifying, or administering medication therapy.

(4) Monitoring and evaluating the patient's response to therapy, including safety and effectiveness.

(5) Performing a comprehensive medication review to identify, resolve, and prevent medication-related problems, including adverse drug events.

(6) Documenting the care delivered and communicating essential information to the patient's other primary care providers.

(7) Providing verbal education and training, beyond what is already required by law, that is designed to enhance patient understanding and appropriate use of the patient's medications.

(8) Providing information, support services, and resources, such as compliance packaging, designed to enhance patient adherence to his or her therapeutic regimens.

(9) Coordinating and integrating medication therapy management services within the broader health care management services being provided to the patient.

(10) Home delivery of medications.

(h) Participants in this pilot program shall be paid an additional dispensing fee of nine dollars and fifty cents ($9.50) per prescription for services rendered after September 1, 2004.

(i) Notwithstanding any other provision of law, the department shall not make any payments for services listed in subdivision (g) that were rendered during any time period in which subdivision (b) of Section 14105.45 has been enjoined by a court order or is otherwise not in effect.

(j) Pilot project contracts under this section may be executed on a noncompetitive bid basis and shall be exempt from the requirements of Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

(k) Pharmacies shall maintain a sufficient quantity of HIV/AIDS medication in their inventories.

(*l*) Pharmacies shall purchase HIV medications from state licensed wholesalers.

14199.3. This article shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute that becomes effective on or before January 1, 2008, deletes or extends that date.

CHAPTER 851

An act to add Section 14132.01 to the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor September 28, 2004. Filed with Secretary of State September 28, 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 that its provisions only apply to the amount of money that a community clinic or free clinic licensed pursuant to subdivision (a) of Section 1204 of the Health and Safety Code, or an intermittent clinic operating pursuant to subdivision (h) of Section 1206 of the Health and Safety Code, that has a valid license pursuant to Article 13 (commencing with Section 4180) of Chapter 9 of Division 2 of the Business and Professions Code may charge the Medi-Cal program and the Family Planning, Access, Care, and Treatment (Family PACT) Waiver Program and that this act shall not impact the rate paid by either the Medi-Cal program or the Family PACT Waiver Program.

SEC. 2. Section 14132.01 is added to the Welfare and Institutions Code, to read:

14132.01. Notwithstanding any other provision of law, a community clinic or free clinic licensed pursuant to subdivision (a) of Section 1204 of the Health and Safety Code or an intermittent clinic operating pursuant to subdivision (h) of Section 1206 of the Health and Safety Code, that has a valid license pursuant to Article 13 (commencing with Section 4180) of Chapter 9 of Division 2 of the Business and Professions Code, and is a covered entity, as defined in Section 256b(a)(4) of Title 42 of the United States Code, shall bill the Medi-Cal program and the Family PACT Waiver Program for any take-home drugs, eligible for reimbursement pursuant to Section 340B of the federal Public Health Service Act (42 U.S.C. Sec. 256b), provided to beneficiaries, an amount equal to the lesser of the clinic's average annual actual acquisition cost for that drug plus a per cycle, per month, per unit, or per prescription clinic dispensing fee up to twelve dollars ($12), or its usual charge made to the general public. Take-home drugs that are dispensed for use by the patient within a specific timeframe of five or less days from the date medically indicated shall be billed at the actual acquisition cost for that drug plus a clinic dispensing fee, not to exceed seventeen dollars ($17) per prescription, or its usual charge made to the general public. Take-home supplies may be billed at the usual charge made to the general public. Reimbursement shall be at the lesser of the amount billed or the Medi-Cal reimbursement rate and shall not exceed the net cost of these drugs or products as provided to retail pharmacies under the Medi-Cal program. Federally qualified health centers and rural health clinics that have elected to be reimbursed for pharmacy costs based on the rate as provided pursuant to subdivision (k) of Section 141532.100, are exempt from this paragraph.

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CHAPTER 852

An act to add Section 53080 to the Government Code, relating to discrimination.

[Approved by Governor September 28, 2004. Filed with Secretary of State September 28, 2004.]

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

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

(a) On June 23, 1972, President Richard Nixon signed into law Title IX of the Education Amendments of 1972 to the 1964 Civil Rights Act. This landmark legislation provides that: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance,... ."

(b) In 2003, the California Legislature, recognizing the importance of female participation in athletics, passed Assembly Bill 833, which became effective January 1, 2004, to prohibit discrimination on the basis of sex in California state secondary and postsecondary educational institutions.

(c) Title IX has expanded athletic opportunities for girls and young women in educational institutions. The dramatic increases in participation rates at both the high school and college levels since Title IX was passed show that when doors are opened to women and girls, they will rush through.

(d) Athletic opportunities provide innumerable benefits to girls and young women, including greater academic success, better physical and psychological health, responsible social behaviors, and enhanced interpersonal skills. Athletic scholarships make it possible for some girls and young women to attend college.

(e) Despite advances in educational settings and efforts by some local agencies to expand opportunities for girls and young women in community youth athletics programs, discrimination against girls and young women in local communities still exists that limits these opportunities. The Legislature declares that there is a need to expand athletic opportunities for girls in the context of community parks and recreation.

(f) California community youth athletics have historically been enjoyed disproportionately by male youth. It is the intent of the Legislature to expand and support equal female participation in youth athletics programs, to provide female youth sports programs equal access to facilities administered by cities, counties, cities and counties, and special districts, and to ensure compliance with the Unruh Civil

Rights Act (Section 51 of the Civil Code), and Section 11135 of the Government Code.

SEC. 2. Section 53080 is added to the Government Code, to read:

53080. (a) No city, county, city and county, or special district, including, but not limited to, a community services district, recreation and park district, regional park district, regional park and open-space district, regional open-space park district, or resort improvement district shall discriminate against any person on the basis of sex or gender in the operation, conduct, or administration of community youth athletics programs or in the allocation of parks and recreation facilities and resources that support or enable these programs.

(b) The Unruh Civil Rights Act (Section 51 of the Civil Code) has been held to prohibit local governmental agencies from discriminating on the bases proscribed by the act, and Section 11135 also prohibits local governmental agencies that receive financial assistance from the state from discriminating on the basis of gender, among other bases.

(c) As used in this section, ''community youth athletics program'' means any athletic program in which youth solely or predominantly participate and that is organized for the purposes of training for and engaging in athletic activity and competition and that is in any way operated, conducted, administered, supported, or enabled by a city, county, city and county, or special district.

(d) As used in this section, ''parks and recreation facilities and resources'' include, but are not limited to, park facilities, including, but not limited to, athletic fields, athletic courts, gymnasiums, recreational rooms, restrooms, concession stands and storage spaces; lands and areas accessed through permitting, leasing, or other land use arrangements, or otherwise accessed through cities, counties, cities and counties, or special districts; sports and recreation equipment; devices used to promote athletics such as scoreboards, banners, and advertising; and all moneys used in conjunction with youth athletics.

(e) It is the intent of the Legislature in enacting this section that girls shall be accorded opportunities for participation in community youth athletics programs on an equal basis, both in quality and scope, to those accorded to boys.

(f) In civil actions brought under this section or under other applicable antidiscrimination laws alleging discrimination in community youth athletics programs, courts shall consider the following factors, among others, in determining whether discrimination exists:

(l) Whether the selection of community youth athletics programs offered effectively accommodate the athletic interests and abilities of members of both genders.

(2) The provision of moneys, equipment, and supplies.

(3) Scheduling of games and practice times.

(4) Opportunity to receive coaching.

(5) Assignment and compensation of coaches.

(6) Access to lands and areas accessed through permitting, leasing, or other land use arrangements, or otherwise accessed through a city, a county, a city and county, or a special district.

(7) Selection of the season for a sport.

(8) Location of the games and practices.

(9) Locker rooms.

(10) Practice and competitive facilities.

(11) Publicity.

(12) Officiation by umpires, referees, or judges who have met training and certification standards.

(g) In making the determination under paragraph (1) of subdivision (f), a court shall assess whether the city, county, city and county, or special district has effectively accommodated the athletic interests and abilities of both genders in any one of the following ways:

(1) The community youth athletics program opportunities for boys and girls are provided in numbers substantially proportionate to their respective numbers in the community.

(2) Where the members of one gender have been, and continue to be, underrepresented in community youth athletics programs, the city, county, city and county, or special district can show a history and continuing practice of program expansion and allocation of resources that are demonstrably responsive to the developing interests and abilities of the members of that gender.

(3) Where the members of one gender are underrepresented in community youth athletics programs, the city, county, city and county, or special district can demonstrate that the interests and abilities of the members of that gender have been fully and effectively accommodated by the present program and allocation of resources.

(h) Effective January 1, 2015, a city, county, city and county, and special district may no longer rely on paragraph (2) of subdivision (g) to show that they have accommodated the athletic interests and abilities of both genders.

(i) Nothing in this section shall be construed to invalidate any existing consent decree or any other settlement agreement entered into by a city, county, city and county, or special district to address gender equity in athletic programs.

(j) This section and any ordinances, regulations, or resolutions adopted pursuant to this section by a city, county, city and county, or special district may be enforced against a city, county, city and county,

or special district by a civil action for injunctive relief or damages or both, which shall be independent of any other rights and remedies.

CHAPTER 853

An act to add Section 107.4 to the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 2004.]

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

SECTION 1. The Legislature finds and declares as follows:

(a) The provision of military family housing is a mission of the military, as stated by the United States Department of Defense.

(b) Under the Military Housing Privatization Initiative (MHPI) (10 U.S.C. Sec. 2871 and following), Congress has entrusted private contractors to construct, renovate, replace, or manage military family housing pursuant to extensive guidelines and restrictions imposed by the military.

(c) The military family housing constructed and managed by private contractors pursuant to the MHPI is situated on a military facility under the control of the military.

(d) A private contractor who constructs, renovates, replaces, or manages military family housing pursuant to the MHPI has neither the right nor the ability to exercise independent authority and control over the day-to-day management or operation of the military family housing, as demonstrated by all of the following:

(1) The number of units, the number of bedrooms per unit, and the unit mix are set by the military, and may not be changed by the contractor without prior approval by the military.

(2) Tenants are designated by a military housing agency.

(3) Rents charged to military personnel or their dependents for the housing units are set by the military.

(4) Financing for the project is subject to the approval of the military. The military has sole discretion over the approval of this financing.

(5) Evictions from the housing units are subject to military justice procedures.

(6) Services for the project normally supplied by a municipality are required to be purchased from the military facility or from a provider designated by the military facility.

(7) The military prescribes rules and regulations governing the use and occupancy of the property.

(8) The military has the authority to remove or bar persons from the property.

(9) The military has the authority to impose access restrictions on the contractor and its tenants.

SEC. 2. Section 107.4 is added to the Revenue and Taxation Code, to read:

107.4. For purposes of paragraph (1) of subdivision (a) of Section 107, there is no independent possession or use of land or improvements if that possession or use is pursuant to a contract that includes, but is not limited to, a long-term lease, for the private construction, renovation, rehabilitation, replacement, management, or maintenance of housing for active duty military personnel and their dependents, if all of the following criteria are met:

(a) The military family housing constructed and managed by private contractor is situated on a military facility under military control, and the construction of that housing is performed under military guidelines in the same manner as construction that is performed by the military.

(b) All services normally provided by a municipality are required to be purchased from the military facility or a provider designated by the military.

(c) The private contractor is not given the right and ability to exercise any significant authority and control over the management or operation of the military family housing, separate and apart from the rules and regulations of the military.

(d) The number of units, the number of bedrooms per unit, and the unit mix are set by the military, and may not be changed by the contractor without prior approval by the military.

(e) Tenants are designated by a military housing agency.

(f) Financing for the project is subject to the approval of the military in its sole discretion.

(g) Rents charged to military personnel or their dependents are set by the military.

(h) The military controls the distribution of revenues from the project to the private contractor, and the private contractor is allowed only a predetermined profit or fee for constructing the military family housing.

(i) Evictions from the housing units are subject to the military justice system.

(j) The military prescribes rules and regulations governing the use and occupancy of the property.

(k) The military has the authority to remove or bar persons from the property.

(*l*) The military may impose access restrictions on the contractor and its tenants.

(m) Any reduction or, if that amount is unknown, the private contractor's reasonable estimate of savings, in property taxes on leased property used for military housing under the Military Housing Privatization Initiative (10 U.S.C. Sec. 2871 and following) shall inure solely to the benefit of the residents of the military housing through improvements, such as a child care center provided by the private contractor.

(n) The military family housing is constructed, renovated, rehabilitated, remodeled, replaced, or managed under the Military Housing Privatization Initiative, or any successor to that law.

SEC. 3. (a) It is the intent of the Legislature in enacting this act to provide legislative direction to county assessors, the State Board of Equalization, the courts, and other involved parties regarding the intended interpretation of the term ''independent'' as it relates to military family housing units that are constructed, renovated, rehabilitated, remodeled, replaced, or managed under the Military Housing Privatization Initiative, or any successor to that law.

(b) Section 107.4 of the Revenue and Taxation Code, as added by this act, does not constitute a change in, but rather, is declaratory of, existing law. Therefore, because this act is declaratory of existing law, no provision of state law, including, but not limited to, Section 8 of Article XVI of the California Constitution, requires reimbursement to any entity for any ad valorem property tax revenue losses that may result from this act.

CHAPTER 854

An act to amend Section 7655 of the Fish and Game Code, and to amend Sections 36700 and 36710 of the Public Resources Code, relating to marine resources.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 2004.]

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

SECTION 1. Section 7655 of the Fish and Game Code is amended to read:

7655. (a) It is the policy of the State of California that the state be represented on the Pacific Fishery Management Council by people who are knowledgeable about fisheries directly subject to the fishery

management plans of the council. Nominations and appointments to the Pacific Fishery Management Council shall be a balanced representation of interested parties, including, but not limited to, representatives from the commercial salmon troll fishery, the groundfish fishery, the coastal pelagic species fishery, the seafood processing industry, the commercial passenger carrying fishing industry, nongovernmental environmental organizations, and marine scientists.

(b) When the Governor nominates persons for any seat on the Pacific Fishery Management Council, those individuals shall be knowledgeable of California's fishery resources and its fishing industry. Further, the nominations may be made after consultation with fishery organizations and other interested parties, including parties representing the public's interest in the fishery resources and marine environment.

SEC. 2. Section 36700 of the Public Resources Code is amended to read:

36700. Six classifications for designating managed areas in the marine and estuarine environments are hereby established as described in this section, to become effective January 1, 2002. Where the term ''marine'' is used, it refers to both marine and estuarine areas. A geographic area may be designated under more than one classification.

(a) A ''state marine reserve'' is a nonterrestrial marine or estuarine area that is designated so the managing agency may achieve one or more of the following:

(1) Protect or restore rare, threatened, or endangered native plants, animals, or habitats in marine areas.

(2) Protect or restore outstanding, representative, or imperiled marine species, communities, habitats, and ecosystems.

(3) Protect or restore diverse marine gene pools.

(4) Contribute to the understanding and management of marine resources and ecosystems by providing the opportunity for scientific research in outstanding, representative, or imperiled marine habitats or ecosystems.

(b) A ''state marine park'' is a nonterrestrial marine or estuarine area that is designated so the managing agency may provide opportunities for spiritual, scientific, educational, and recreational opportunities, as well as one or more of the following:

(1) Protect or restore outstanding, representative, or imperiled marine species, communities, habitats, and ecosystems.

(2) Contribute to the understanding and management of marine resources and ecosystems by providing the opportunity for scientific research in outstanding representative or imperiled marine habitats or ecosystems.

(3) Preserve cultural objects of historical, archaeological, and scientific interest in marine areas.

(4) Preserve outstanding or unique geological features.

(c) A ''state marine conservation area'' is a nonterrestrial marine or estuarine area that is designated so the managing agency may achieve one or more of the following:

(1) Protect or restore rare, threatened, or endangered native plants, animals, or habitats in marine areas.

(2) Protect or restore outstanding, representative, or imperiled marine species, communities, habitats, and ecosystems.

(3) Protect or restore diverse marine gene pools.

(4) Contribute to the understanding and management of marine resources and ecosystems by providing the opportunity for scientific research in outstanding, representative, or imperiled marine habitats or ecosystems.

(5) Preserve outstanding or unique geological features.

(6) Provide for sustainable living marine resource harvest.

(d) A ''state marine cultural preservation area'' is a nonterrestrial marine or estuarine area designated so the managing agency may preserve cultural objects or sites of historical, archaeological, or scientific interest in marine areas.

(e) A ''state marine recreational management area'' is a nonterrestrial marine or estuarine area designated so the managing agency may provide, limit, or restrict recreational opportunities to meet other than exclusively local needs while preserving basic resource values for present and future generations.

(f) A ''state water quality protection area'' is a nonterrestrial marine or estuarine area designated to protect marine species or biological communities from an undesirable alteration in natural water quality, including, but not limited to, areas of special biological significance that have been designated by the State Water Resources Control Board through its water quality control planning process. ''Areas of special biological significance'' are a subset of state water quality protection areas, and require special protection as determined by the State Water Resources Control Board pursuant to the California Ocean Plan adopted and reviewed pursuant to Article 4 (commencing with Section 13160) of Chapter 3 of Division 7 of the Water Code and pursuant to the Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Waters and Enclosed Bays and Estuaries of California (California Thermal Plan) adopted by the state board.

SEC. 3. Section 36710 of the Public Resources Code is amended to read:

36710. (a) In a state marine reserve, it is unlawful to injure, damage, take, or possess any living geological, or cultural marine resource, except under a permit or specific authorization from the managing agency for research, restoration, or monitoring purposes.

While, to the extent feasible, the area shall be open to the public for managed enjoyment and study, the area shall be maintained to the extent practicable in an undisturbed and unpolluted state. Access and use for activities including, but not limited to, walking, swimming, boating, and diving may be restricted to protect marine resources. Research, restoration, and monitoring may be permitted by the managing agency. Educational activities and other forms of nonconsumptive human use may be permitted by the designating entity or managing agency in a manner consistent with the protection of all marine resources.

(b) In a state marine park, it is unlawful to injure, damage, take, or possess any living or nonliving marine resource for commercial exploitation purposes. Any human use that would compromise protection of the species of interest, natural community or habitat, or geological, cultural, or recreational features may be restricted by the designating entity or managing agency. All other uses are allowed, including scientific collection with a permit, research, monitoring, and public recreation, including recreational harvest, unless otherwise restricted. Public use, enjoyment, and education are encouraged, in a manner consistent with protecting resource values.

(c) In a state marine conservation area, it is unlawful to injure, damage, take, or possess any living, geological, or cultural marine resource for commercial or recreational purposes, or a combination of commercial and recreational purposes, that the designating entity or managing agency determines would compromise protection of the species of interest, natural community, habitat, or geological features. The designating entity or managing agency may permit research, education, and recreational activities, and certain commercial and recreational harvest of marine resources.

(d) In a state marine cultural preservation area, it is unlawful to damage, take, or possess any cultural marine resource. Complete integrity of the cultural resources shall be sought, and no structure or improvements that conflict with that integrity shall be permitted. No other use is restricted.

(e) In a state marine recreational management area, it is unlawful to perform any activity that, as determined by the designating entity or managing agency, would compromise the recreational values for which the area may be designated. Recreational opportunities may be protected, enhanced, or restricted, while preserving basic resource values of the area. No other use is restricted.

(f) In a state water quality protection area, waste discharges shall be prohibited or limited by the imposition of special conditions in accordance with the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code) and implementing regulations, including, but not limited to, the California

Ocean Plan adopted and reviewed pursuant to Article 4 (commencing with Section 13160) of Chapter 3 of Division 7 of the Water Code and the Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Waters and Enclosed Bays and Estuaries of California (California Thermal Plan) adopted by the state board. No other use is restricted.

CHAPTER 855

An act to amend Sections 1731 and 1768 of the Public Utilities Code, relating to public utilities.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 2004.]

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

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

(a) Chapter 4 of the Statutes of the 2001–02 First Extraordinary Session authorized the Department of Water Resources to purchase electric power for sale to customers of certain financially distressed electrical corporations, to issue bonds to fund a portion of the costs of those purchases, and to establish revenue requirements to recover its costs of operations and debt service from those customers. Chapter 4 contained additional provisions with respect to the rates and terms and conditions of service offered by electrical corporations.

(b) Chapter 9 of the Statutes of the 2001–02 First Extraordinary Session, enacted various amendments to the provisions described in subdivision (a), and also added expedited rehearing and judicial review provisions to the Public Utilities Code that apply to all orders and decisions of the Public Utilities Commission arising under Chapter 4.

(c) While the expedited rehearing and judicial review provisions may still be necessary with respect to orders and decisions of the commission that relate to the determination or implementation of the department's revenue requirements or the establishment or implementation of bond or power charges necessary to recover those revenue requirements, the expedited rehearing and judicial review provisions are not necessary or appropriate and should be repealed with respect to the other issues addressed by Chapter 4, so that rehearing and judicial review of orders and decisions of the commission that address those issues can be conducted under the statutory procedures that govern most other orders and decisions of the commission.

SEC. 2. Section 1731 of the Public Utilities Code is amended to read:

1731. (a) The commission shall set an effective date when issuing an order or decision. The commission may set the effective date of an order or decision prior to the date of issuance of the order or decision.

(b) After any order or decision has been made by the commission, any party to the action or proceeding, or any stockholder or bondholder or other party pecuniarily interested in the public utility affected, may apply for a rehearing in respect to any matters determined in the action or proceeding and specified in the application for rehearing. The commission may grant and hold a rehearing on those matters, if in its judgment sufficient reason is made to appear. No cause of action arising out of any order or decision of the commission shall accrue in any court to any corporation or person unless the corporation or person has filed an application to the commission for a rehearing within 30 days after the date of issuance or within 10 days after the date of issuance in the case of an order issued pursuant to either Article 5 (commencing with Section 816) or Article 6 (commencing with Section 851) of Chapter 4 relating to security transactions and the transfer or encumbrance of utility property. For purposes of this article, ''date of issuance'' means the date when the commission mails the order or decision to the parties to the action or proceeding.

(c) No cause of action arising out of any order or decision of the commission construing, applying, or implementing the provisions of Chapter 4 of the Statutes of the 2001–02 First Extraordinary Session that (1) relates to the determination or implementation of the department's revenue requirements, or the establishment or implementation of bond or power charges necessary to recover those revenue requirements, or (2) in the sole determination of the Department of Water Resources, the expedited review of order or decision of the commission is necessary or desirable, for the maintenance of any credit ratings on any bonds or notes of the department issued pursuant to Division 27 (commencing with Section 80000) of the Water Code or for the department to meet its obligations with respect to any bonds or notes pursuant to that division, shall accrue in any court to any corporation or person unless the corporation or person has filed an application with the commission for a rehearing within 10 days after the date of issuance of the order or decision. The Department of Water Resources shall notify the commission of any determination pursuant to paragraph (2) of this subdivision prior to the issuance by the commission of any order or decision construing, applying, or implementing the provisions of Chapter 4 of the Statutes of the 2001–02 First Extraordinary Session. The commission shall issue its decision and order on rehearing within 20 days after the filing of the application.

SEC. 3. Section 1768 of the Public Utilities Code is amended to read:

1768. The following procedures shall apply to judicial review of an order or decision of the commission interpreting, implementing, or applying the provisions of Chapter 4 of the Statutes of the 2001–02 First Extraordinary Session that (1) relates to the determination or implementation of the revenue requirements of the Department of Water Resources or the establishment or implementation of bond or power charges necessary to recover those revenue requirements, or (2) in the sole determination of the department, the expedited review of an order or decision of the commission is necessary or desirable, for the maintenance of any credit ratings on any bonds or notes of the department issued pursuant to Division 27 (commencing with Section 80000) of the Water Code or for the department to meet its obligations with respect to any bonds or notes pursuant to that division:

(a) Within 30 days after the commission issues its order or decision denying the application for a rehearing, or, if the application is granted, then within 30 days after the commission issues its decision on rehearing, any aggrieved party may petition for a writ of review in the California Supreme Court for the purpose of determining the lawfulness of the original order or decision or of the order or decision on rehearing. If the writ issues, it shall be made returnable at a time and place specified by court order and shall direct the commission to certify its record in the case to the court within the time specified. No order of the commission interpreting, implementing, or applying the provisions of Chapter 4 of the Statutes of the 2001–02 First Extraordinary Session shall be subject to review in the courts of appeal.

(b) The petition for review shall be served upon the executive director of the commission either personally or by service at the office of the commission.

(c) For purposes of this section, the issuance of a decision or the granting of an application shall be construed to have occurred on the date when the commission mails the decision or grant to the parties to the action or proceeding.

(d) All actions and proceedings under this section and all actions or proceedings to which the commission or the people of the State of California are parties in which any question arises under this section, or under or concerning any order or decision of the commission under this section, shall be preferred over, and shall be heard and determined in preference to, all other civil business except election causes, irrespective of position on the calendar.

(e) The provisions of this article apply to actions under this section to the extent that those provisions are not in conflict with this section.

CHAPTER 856

An act to add Section 12012.45 to the Government Code, relating to tribal gaming.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 2004.]

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

SECTION 1. Section 12012.45 is added to the Government Code, to read:

12012.45. (a) The following tribal-state gaming compacts and amendments of tribal-state gaming compacts entered into in accordance with the Indian Gaming Regulatory Act of 1988 (18 U.S.C. Sec. 1166 to 1168, incl., and 25 U.S.C. Sec. 2701 et seq.) are hereby ratified:

(1) The amendment of the compact between the State of California and the Buena Vista Rancheria of Me-Wuk Indians, executed on August 23, 2004.

(2) The compact between the State of California and the Fort Mojave Indian Tribe, executed on August 23, 2004.

(3) The compact between the State of California and the Coyote Valley Band of Pomo Indians, executed on August 23, 2004.

(4) The amendment to the compact between the State of California and the Ewiiaapaayp Band of Kumeyaay Indians, executed on August 23, 2004.

(b) (1) In deference to tribal sovereignty, none of the following shall be deemed a project for purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code):

(A) The execution of an amendment of a tribal-state gaming compact ratified by this section.

(B) The execution of a tribal-state gaming compact ratified by this section.

(C) The execution of an intergovernmental agreement between a tribe and a county or city government negotiated pursuant to the express authority of, or as expressly referenced in, a tribal-state gaming compact or an amended tribal-state gaming compact ratified by this section.

(D) The execution of an intergovernmental agreement between a tribe and the California Department of Transportation negotiated pursuant to

the express authority of, or as expressly referenced in, a tribal-state gaming compact or an amended tribal-state gaming compact ratified by this section.

(E) The on-reservation impacts of compliance with the terms of a tribal-state gaming compact or an amended tribal-state gaming compact ratified by this section.

(F) The sale of compact assets, as defined in subdivision (a) of Section 63048.6, or the creation of the special purpose trust established pursuant to Section 63048.65.

(2) Except as expressly provided herein, nothing in this subdivision shall be construed to exempt a city, county, a city and county, or the California Department of Transportation from the requirements of the California Environmental Quality Act.

(c) Revenue contributions made to the state by tribes pursuant to the tribal-state gaming compacts and amendments of tribal-state gaming compacts ratified by this section shall be deposited in the General Fund.

CHAPTER 857

An act to amend Sections 4054, 4165, and 4166 of, to amend, repeal, and add Sections 4053, 4059.5, 4081, 4100, 4105, 4160, 4163, 4163.6, 4164, 4196, 4301, 4305.5, 4331, and 4400 of, to add Sections 4022.5, 4034, 4084, 4085, 4086, 4126.5, 4163.5, and 4168 to, to add and repeal Sections 4053.1 and 4169 of, and to repeal and add Section 4162 of, the Business and Professions Code, relating to drugs.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 2004.]

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

SECTION 1. Section 4022.5 is added to the Business and Professions Code, to read:

4022.5. (a) ''Designated representative'' means an individual to whom a license has been granted pursuant to Section 4053.

(b) ''Designated representative-in-charge'' means a designated representative or a pharmacist who is the supervisor or manager of a wholesaler or veterinary food-animal drug retailer.

(c) This section shall become operative on January 1, 2006.

SEC. 3. Section 4034 is added to the Business and Professions Code, to read:

4034. (a) ''Pedigree'' means a record, in electronic form, containing information regarding each transaction resulting in a change

of ownership of a given dangerous drug, from sale by a manufacturer, through acquisition and sale by a wholesaler, until final sale to a pharmacy or other person furnishing, administering, or dispensing the dangerous drug.

(b) A pedigree shall include all of the following information:

(1) The source of the dangerous drug, including the name, state license number, including California license number if available, and principal address of the source.

(2) The quantity of the dangerous drug, its dosage form and strength, the date of the transaction, the sales invoice number, the container size, the number of containers, the expiration dates, and the lot numbers.

(3) The business name, address, and if appropriate, the state license number, including a California license number if available, of each owner of the dangerous drug, and the dangerous drug shipping information, including the name and address of each person certifying delivery or receipt of the dangerous drug.

(4) A certification under penalty of perjury from a responsible party of the source of the dangerous drug that the information contained in the pedigree is true and accurate.

(c) If a licensed health care service plan, hospital organization, and one or more physician organizations have exclusive contractual relationships to provide health care services, drugs distributed between these persons shall be deemed not to have changed ownership.

(d) The application of the pedigree requirement in pharmacies shall be subject to review during the board's sunset review to be conducted as described in subdivision (f) of Section 4001.

(e) This section shall become operative on January 1, 2007.

SEC. 6. Section 4053 of the Business and Professions Code is amended to read:

4053. (a) Subdivision (a) of Section 4051 shall not apply to a veterinary food-animal drug retailer or wholesaler if the board shall find that sufficient, qualified supervision is employed by the veterinary food-animal drug retailer or wholesaler to adequately safeguard and protect the public health, nor shall Section 4051 apply to any laboratory licensed under Section 351 of Title III of the Public Health Service Act (Public Law 78-410).

(b) An individual employed by a veterinary food-animal drug retailer or wholesaler may apply for an exemption from Section 4051. In order to obtain and maintain that exemption, the individual shall meet the following requirements:

(1) He or she shall be a high school graduate or possess a general education development equivalent.

(2) He or she shall have a minimum of one year of paid work experience related to the distribution or dispensing of dangerous drugs

or dangerous devices or meet all of the prerequisites to take the examination required for licensure as a pharmacist by the board.

(3) He or she shall complete a training program approved by the board that, at a minimum, addresses each of the following subjects:

(A) Knowledge and understanding of state and federal law relating to the distribution of dangerous drugs and dangerous devices.

(B) Knowledge and understanding of state and federal law relating to the distribution of controlled substances.

(C) Knowledge and understanding of quality control systems.

(D) Knowledge and understanding of the United States Pharmacopoeia standards relating to the safe storage and handling of drugs.

(E) Knowledge and understanding of prescription terminology, abbreviations, dosages and format.

(4) The board may, by regulation, require training programs to include additional material.

(5) The board may, by regulation, require training programs to include additional material.

(6) The board shall not issue a certificate of exemption until the applicant provides proof of completion of the required training to the board.

(c) The veterinary food-animal drug retailer or wholesaler shall not operate without a pharmacist or an individual in possession of a certificate of exemption on its premises.

(d) Only a pharmacist or an individual in possession of a certificate of exemption shall prepare and affix the label to veterinary food-animal drugs.

(e) This section shall become inoperative and is repealed on January 1, 2006, unless a later enacted statute, that becomes operative before January 1, 2006, amends or repeals that date.

SEC. 7. Section 4053 is added to the Business and Professions Code, to read:

4053. (a) Subdivision (a) of Section 4051 shall not apply to a veterinary food-animal drug retailer or wholesaler that employs a designated representative to adequately safeguard and protect the public health, nor shall Section 4051 apply to any laboratory licensed under Section 351 of Title III of the Public Health Service Act (Public Law 78-410).

(b) An individual may apply for a designated representative license. In order to obtain and maintain that license, the individual shall meet all of the following requirements:

(1) He or she shall be a high school graduate or possess a general education development equivalent.

(2) He or she shall have a minimum of one year of paid work experience, in the past three years, related to the distribution or dispensing of dangerous drugs or dangerous devices or meet all of the prerequisites to take the examination required for licensure as a pharmacist by the board.

(3) He or she shall complete a training program approved by the board that, at a minimum, addresses each of the following subjects:

(A) Knowledge and understanding of California law and federal law relating to the distribution of dangerous drugs and dangerous devices.

(B) Knowledge and understanding of California law and federal law relating to the distribution of controlled substances.

(C) Knowledge and understanding of quality control systems.

(D) Knowledge and understanding of the United States Pharmacopoeia standards relating to the safe storage and handling of drugs.

(E) Knowledge and understanding of prescription terminology, abbreviations, dosages and format.

(4) The board may, by regulation, require training programs to include additional material.

(5) The board may not issue a license as a designated representative until the applicant provides proof of completion of the required training to the board.

(c) The veterinary food-animal drug retailer or wholesaler shall not operate without a pharmacist or a designated representative on its premises.

(d) Only a pharmacist or a designated representative shall prepare and affix the label to veterinary food-animal drugs.

(e) This section shall become operative on January 1, 2006.

SEC. 8. Section 4053.1 is added to the Business and Professions Code, to read:

4053.1. (a) Certificates of exemption issued or renewed pursuant to Section 4053 prior to January 1, 2005, shall remain valid until their expiration date or until January 1, 2007, whichever date is earlier.

(b) Individuals in possession of a current and valid certificate of exemption shall be issued a license as a designated representative if the individual satisfies the requirements of Section 4053 and pays the fee required by subdivision (i) of Section 4400.

(c) This section shall become inoperative and be repealed on January 1, 2007, unless a later enacted statute, that becomes operative on or before December 31, 2006, amends or repeals that date.

SEC. 9. Section 4054 of the Business and Professions Code is amended to read:

4054. Section 4051 shall not apply to a manufacturer or wholesaler that provides dialysis drugs and devices directly to patients.

SEC. 10. Section 4059.5 of the Business and Professions Code is amended to read:

4059.5. (a) Except as otherwise provided in this chapter, dangerous drugs or dangerous devices may only be ordered by an entity licensed by the board and must be delivered to the licensed premises and signed for and received by the pharmacist-in-charge or, in his or her absence, another pharmacist designated by the pharmacist-in-charge. Where a licensee is permitted to operate through an exemptee, the exemptee may sign for and receive the delivery.

(b) A dangerous drug or dangerous device transferred, sold, or delivered to any person within this state shall be transferred, sold, or delivered only to an entity licensed by the board, to a manufacturer, or to an ultimate user or the ultimate user's agent.

(c) Notwithstanding subdivisions (a) and (b), deliveries to a hospital pharmacy may be made to a central receiving location within the hospital. However, the dangerous drugs or dangerous devices shall be delivered to the licensed pharmacy premises within one working day following receipt by the hospital, and the pharmacist on duty at that time shall immediately inventory the dangerous drug or dangerous devices.

(d) Notwithstanding any other provision of law, a dangerous drug or dangerous device may be ordered by and provided to a manufacturer, physician, dentist, podiatrist, optometrist, veterinarian, or laboratory, or a physical therapist acting within the scope of his or her license. Any person or entity receiving delivery of any dangerous drugs or dangerous devices, or a duly authorized representative of the person or entity, shall sign for the receipt of the dangerous drugs or dangerous devices.

(e) A dangerous drug or dangerous device shall not be transferred, sold, or delivered to any person outside this state, whether foreign or domestic, unless the transferor, seller, or deliverer does so in compliance with the laws of this state and of the United States and of the state or country to which the dangerous drugs or dangerous devices are to be transferred, sold, or delivered. Compliance with the laws of this state and the United States and of the state or country to which the dangerous drugs or dangerous devices are to be delivered shall include, but not be limited to, determining that the recipient of the dangerous drugs or dangerous devices is authorized by law to receive the dangerous drugs or dangerous devices.

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

SEC. 10.5. Section 4059.5 of the Business and Professions Code is amended to read:

4059.5. (a) Except as otherwise provided in this chapter, dangerous drugs or dangerous devices may only be ordered by an entity licensed

by the board and shall be delivered to the licensed premises and signed for and received by a pharmacist. Where a licensee is permitted to operate through an exemptee, the exemptee may sign for and receive the delivery.

(b) A dangerous drug or dangerous device transferred, sold, or delivered to a person within this state shall be transferred, sold, or delivered only to an entity licensed by the board, to a manufacturer, or to an ultimate user or the ultimate user's agent.

(c) Notwithstanding subdivisions (a) and (b), deliveries to a hospital pharmacy may be made to a central receiving location within the hospital. However, the dangerous drugs or dangerous devices shall be delivered to the licensed pharmacy premises within one working day following receipt by the hospital, and the pharmacist on duty at that time shall immediately inventory the dangerous drugs or dangerous devices.

(d) Notwithstanding any other provision of law, a dangerous drug or dangerous device may be ordered by and provided to a manufacturer, physician, dentist, podiatrist, optometrist, veterinarian, or laboratory, or a physical therapist acting within the scope of his or her license. A person or entity receiving delivery of a dangerous drug or dangerous device, or a duly authorized representative of the person or entity, shall sign for the receipt of the dangerous drug or dangerous device.

(e) A dangerous drug or dangerous device shall not be transferred, sold, or delivered to a person outside this state, whether foreign or domestic, unless the transferor, seller, or deliverer does so in compliance with the laws of this state and of the United States and of the state or country to which the dangerous drugs or dangerous devices are to be transferred, sold, or delivered. Compliance with the laws of this state and the United States and of the state or country to which the dangerous drugs or dangerous devices are to be delivered shall include, but not be limited to, determining that the recipient of the dangerous drugs or dangerous devices is authorized by law to receive the dangerous drugs or dangerous devices.

(f) Notwithstanding subdivision (a), a pharmacy may take delivery of dangerous drugs and dangerous devices when the pharmacy is closed and no pharmacist is on duty if all of the following requirements are met:

(1) The drugs are placed in a secure storage facility in the same building as the pharmacy.

(2) Only the pharmacist-in-charge or a pharmacist designated by the pharmacist-in-charge has access to the secure storage facility after dangerous drugs or dangerous devices have been delivered.

(3) The secure storage facility has a means of indicating whether it has been entered after dangerous drugs or dangerous devices have been delivered.

(4) The pharmacy maintains written policies and procedures for the delivery of dangerous drugs and dangerous devices to a secure storage facility.

(5) The agent delivering dangerous drugs and dangerous devices pursuant to this subdivision leaves documents indicating the name and amount of each dangerous drug or dangerous device delivered in the secure storage facility.

The pharmacy shall be responsible for the dangerous drugs and dangerous devices delivered to the secure storage facility. The pharmacy shall also be responsible for obtaining and maintaining records relating to the delivery of dangerous drugs and dangerous devices to a secure storage facility.

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

SEC. 11. Section 4059.5 is added to the Business and Professions Code, to read:

4059.5. (a) Except as otherwise provided in this chapter, dangerous drugs or dangerous devices may only be ordered by an entity licensed by the board and shall be delivered to the licensed premises and signed for and received by the pharmacist-in-charge or, in his or her absence, another pharmacist designated by the pharmacist-in-charge. Where a licensee is permitted to operate through a designated representative, the designated representative may sign for and receive the delivery.

(b) A dangerous drug or dangerous device transferred, sold, or delivered to any person within this state shall be transferred, sold, or delivered only to an entity licensed by the board, to a manufacturer, or to an ultimate user or the ultimate user's agent.

(c) Notwithstanding subdivisions (a) and (b), deliveries to a hospital pharmacy may be made to a central receiving location within the hospital. However, the dangerous drugs or dangerous devices shall be delivered to the licensed pharmacy premises within one working day following receipt by the hospital, and the pharmacist on duty at that time shall immediately inventory the dangerous drugs or dangerous devices.

(d) Notwithstanding any other provision of law, a dangerous drug or dangerous device may be ordered by and provided to a manufacturer, physician, dentist, podiatrist, optometrist, veterinarian, or laboratory, or physical therapist acting within the scope of his or her license. A person or entity receiving delivery of any dangerous drugs or dangerous devices, or a duly authorized representative of the person or entity, shall sign for the receipt of the dangerous drugs or dangerous devices.

(e) A dangerous drug or dangerous device shall not be transferred, sold, or delivered to any person outside this state, whether foreign or domestic, unless the transferor, seller, or deliverer does so in compliance

with the laws of this state and of the United States and of the state or country to which the dangerous drugs or dangerous devices are to be transferred, sold, or delivered. Compliance with the laws of this state and the United States and of the state or country to which the dangerous drugs or dangerous devices are to be delivered shall include, but not be limited to, determining that the recipient of the dangerous drugs or dangerous devices is authorized by law to receive the dangerous drugs or dangerous devices.

(f) This section shall become operative on January 1, 2006.

SEC. 11.5. Section 4059.5 is added to the Business and Professions Code, to read:

4059.5. (a) Except as otherwise provided in this chapter, dangerous drugs or dangerous devices may only be ordered by an entity licensed by the board and shall be delivered to the licensed premises and signed for and received by a pharmacist. Where a licensee is permitted to operate through a designated representative, the designated representative may sign for and receive the delivery.

(b) A dangerous drug or dangerous device transferred, sold, or delivered to a person within this state shall be transferred, sold, or delivered only to an entity licensed by the board, to a manufacturer, or to an ultimate user or the ultimate user's agent.

(c) Notwithstanding subdivisions (a) and (b), deliveries to a hospital pharmacy may be made to a central receiving location within the hospital. However, the dangerous drugs or dangerous devices shall be delivered to the licensed pharmacy premises within one working day following receipt by the hospital, and the pharmacist on duty at that time shall immediately inventory the dangerous drugs or dangerous devices.

(d) Notwithstanding any other provision of law, a dangerous drug or dangerous device may be ordered by and provided to a manufacturer, physician, dentist, podiatrist, optometrist, veterinarian, or laboratory, or a physical therapist acting within the scope of his or her license. A person or entity receiving delivery of a dangerous drug or dangerous device, or a duly authorized representative of the person or entity, shall sign for the receipt of the dangerous drug or dangerous device.

(e) A dangerous drug or dangerous device shall not be transferred, sold, or delivered to a person outside this state, whether foreign or domestic, unless the transferor, seller, or deliverer does so in compliance with the laws of this state and of the United States and of the state or country to which the dangerous drugs or dangerous devices are to be transferred, sold, or delivered. Compliance with the laws of this state and the United States and of the state or country to which the dangerous drugs or dangerous devices are to be delivered shall include, but not be limited to, determining that the recipient of the dangerous drugs or dangerous

devices is authorized by law to receive the dangerous drugs or dangerous devices.

(f) Notwithstanding subdivision (a), a pharmacy may take delivery of dangerous drugs and dangerous devices when the pharmacy is closed and no pharmacist is on duty if all of the following requirements are met:

(1) The drugs are placed in a secure storage facility in the same building as the pharmacy.

(2) Only the pharmacist-in-charge or a pharmacist designated by the pharmacist-in-charge has access to the secure storage facility after dangerous drugs or dangerous devices have been delivered.

(3) The secure storage facility has a means of indicating whether it has been entered after dangerous drugs or dangerous devices have been delivered.

(4) The pharmacy maintains written policies and procedures for the delivery of dangerous drugs and dangerous devices to a secure storage facility.

(5) The agent delivering dangerous drugs and dangerous devices pursuant to this subdivision leaves documents indicating the name and amount of each dangerous drug or dangerous device delivered in the secure storage facility.

The pharmacy shall be responsible for the dangerous drugs and dangerous devices delivered to the secure storage facility. The pharmacy shall also be responsible for obtaining and maintaining records relating to the delivery of dangerous drugs and dangerous devices to a secure storage facility.

(g) This section shall become operative on January 1, 2006.

SEC. 12. Section 4081 of the Business and Professions Code is amended to read:

4081. (a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

(b) The owner, officer, and partner of any pharmacy, wholesaler, or veterinary food-animal drug retailer shall be jointly responsible, with the

pharmacist-in-charge or exemptee, for maintaining the records and inventory described in this section.

(c) The pharmacist-in-charge or exemptee shall not be criminally responsible for acts of the owner, officer, partner, or employee that violate this section and of which the pharmacist-in-charge or exemptee had no knowledge, or in which he or she did not knowingly participate.

(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. 12.5. Section 4081 of the Business and Professions Code is amended to read:

4081. (a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

(b) The owner, officer, and partner of any pharmacy, wholesaler, or veterinary food-animal drug retailer shall be jointly responsible, with the pharmacist-in-charge or exemptee-in-charge, for maintaining the records and inventory described in this section.

(c) The pharmacist-in-charge or exemptee-in-charge shall not be criminally responsible for acts of the owner, officer, partner, or employee that violate this section and of which the pharmacist-in-charge or exemptee-in-charge had no knowledge, or in which he or she did not knowingly participate.

(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. 13. Section 4081 is added to the Business and Professions Code, to read:

4081. (a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer, physician,

dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

(b) The owner, officer, and partner of a pharmacy, wholesaler, or veterinary food-animal drug retailer shall be jointly responsible, with the pharmacist-in-charge or designated representative-in-charge, for maintaining the records and inventory described in this section.

(c) The pharmacist-in-charge or designated representative-in-charge shall not be criminally responsible for acts of the owner, officer, partner, or employee that violate this section and of which the pharmacist-in-charge or designated representative-in-charge had no knowledge, or in which he or she did not knowingly participate.

(d) This section shall become operative on January 1, 2006.

SEC. 13.5. Section 4081 is added to the Business and Professions Code, to read:

4081. (a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

(b) The owner, officer, and partner of a pharmacy, wholesaler, or veterinary food-animal drug retailer shall be jointly responsible, with the pharmacist-in-charge or representative-in-charge, for maintaining the records and inventory described in this section.

(c) The pharmacist-in-charge or representative-in-charge shall not be criminally responsible for acts of the owner, officer, partner, or employee that violate this section and of which the pharmacist-in-charge or representative-in-charge had no knowledge, or in which he or she did not knowingly participate.

(d) This section shall become operative on January 1, 2006.

SEC. 14. Section 4084 is added to the Business and Professions Code, to read:

4084. (a) When a board inspector finds, or has probable cause to believe, that any dangerous drug or dangerous device is adulterated or counterfeit, the board inspector shall affix a tag or other marking to that dangerous drug or dangerous device. The board inspector shall give notice to the person that the dangerous drug or dangerous device bearing the tag or marking has been embargoed.

(b) When a board inspector has found that an embargoed dangerous drug or dangerous device is not adulterated or counterfeit, a board inspector shall remove the tag or other marking.

(c) A board inspector may secure a sample or specimen of a dangerous drug or dangerous device. If the board inspector obtains a sample prior to leaving the premises, the board inspector shall leave a receipt describing the sample.

(d) For the purposes of this article ''counterfeit'' shall have the meaning defined in Section 109905 of the Health and Safety Code.

(e) For the purposes of this article ''adulterated'' shall have the meaning defined in Article 2 (commencing with Section 111250) of Chapter 6 of Part 5 of Division 104 of the Health and Safety Code.

SEC. 15. Section 4085 is added to the Business and Professions Code, to read:

4085. (a) It is unlawful for any person to remove, sell, or dispose of an embargoed dangerous drug or dangerous device without permission of the board.

(b) When a board inspector has reasonable cause to believe, that the embargo will be violated, a board inspector may remove the embargoed dangerous drug or dangerous device from the premises.

SEC. 16. Section 4086 is added to the Business and Professions Code, to read:

4086. (a) If a dangerous drug or dangerous device is alleged to be adulterated or counterfeit, the board shall commence proceedings in the superior court in whose jurisdiction the dangerous drug or dangerous device is located, for condemnation of the dangerous drug or dangerous device.

(b) If the court finds that an embargoed dangerous drug or dangerous device is adulterated or counterfeit, the dangerous drug or dangerous device shall, after entry of the judgment, be destroyed at the expense of the claimant or owner, under the supervision of the board. All court costs and fees and all reasonable costs incurred by the board in investigating and prosecuting the action, including, but not limited to, the costs of storage and testing, shall be paid by the claimant or owner of the dangerous drug or dangerous device.

(c) A superior court of this state may condemn any dangerous drug or dangerous device pursuant to this article. In the absence of an order, the dangerous drug or dangerous device may be destroyed under the

supervision of the board who has the written consent of the owner, his or her attorney, or authorized representative. If the board cannot ascertain ownership of the dangerous drug or dangerous device within 30 days of establishing an embargo, the board may destroy the dangerous drug or dangerous device.

SEC. 17. Section 4100 of the Business and Professions Code is amended to read:

4100. (a) Within 30 days after changing his or her address of record with the board or after changing his or her name according to law, every pharmacist, intern pharmacist, technician, or exemptee shall notify the executive officer of the board of the change of address or change of name.

(b) This section shall become inoperative and is repealed on January 1, 2006, unless a later enacted statute, that becomes operative on or before January 1, 2006, amends or repeals that date.

SEC. 18. Section 4100 is added to the Business and Professions Code, to read:

4100. (a) Within 30 days after changing his or her address of record with the board or after changing his or her name according to law, a pharmacist, intern pharmacist, technician, or designated representative shall notify the executive officer of the board of the change of address or change of name.

(b) This section shall become operative on January 1, 2006.

SEC. 19. Section 4105 of the Business and Professions Code is amended to read:

4105. (a) All records or other documentation of the acquisition and disposition of dangerous drugs and dangerous devices by any entity licensed by the board shall be retained on the licensed premises in a readily retrievable form.

(b) The licensee may remove the original records or documentation from the licensed premises on a temporary basis for license-related purposes. However, a duplicate set of those records or other documentation shall be retained on the licensed premises.

(c) The records required by this section shall be retained on the licensed premises for a period of three years from the date of making.

(d) Any records that are maintained electronically shall be maintained so that the pharmacist-in-charge, the pharmacist on duty if the pharmacist-in-charge is not on duty, or, in the case of a veterinary food-animal drug retailer or wholesaler, the exemptee, shall, at all times during which the licensed premises are open for business, be able to produce a hard copy and electronic copy of all records of acquisition or disposition or other drug or dispensing-related records maintained electronically.

(e) (1) Notwithstanding subdivisions (a), (b), and (c), the board, may upon written request, grant to a licensee a waiver of the requirements that

the records described in subdivisions (a), (b), and (c) be kept on the licensed premises.

(2) A waiver granted pursuant to this subdivision shall not affect the board's authority under this section or any other provision of this chapter.

(f) This section shall become inoperative and is repealed on January 1, 2006, unless a later enacted statute, that becomes operative on or before January 1, 2006, amends or repeals that date.

SEC. 20. Section 4105 is added to the Business and Professions Code, to read:

4105. (a) All records or other documentation of the acquisition and disposition of dangerous drugs and dangerous devices by any entity licensed by the board shall be retained on the licensed premises in a readily retrievable form.

(b) The licensee may remove the original records or documentation from the licensed premises on a temporary basis for license-related purposes. However, a duplicate set of those records or other documentation shall be retained on the licensed premises.

(c) The records required by this section shall be retained on the licensed premises for a period of three years from the date of making.

(d) Any records that are maintained electronically shall be maintained so that the pharmacist-in-charge, the pharmacist on duty if the pharmacist-in-charge is not on duty, or, in the case of a veterinary food-animal drug retailer or wholesaler, the designated representative on duty, shall, at all times during which the licensed premises are open for business, be able to produce a hard copy and electronic copy of all records of acquisition or disposition or other drug or dispensing-related records maintained electronically.

(e) (1) Notwithstanding subdivisions (a), (b), and (c), the board, may upon written request, grant to a licensee a waiver of the requirements that the records described in subdivisions (a), (b), and (c) be kept on the licensed premises.

(2) A waiver granted pursuant to this subdivision shall not affect the board's authority under this section or any other provision of this chapter.

(f) This section shall become operative on January 1, 2006.

SEC. 23. Section 4126.5 is added to the Business and Professions Code, to read:

4126.5. (a) A pharmacy may furnish dangerous drugs only to the following:

(1) A wholesaler owned or under common control by the wholesaler from whom the dangerous drug was acquired.

(2) The pharmaceutical manufacturer from whom the dangerous drug was acquired.

(3) A licensed wholesaler acting as a reverse distributor.

(4) Another pharmacy or wholesaler to alleviate a temporary shortage of a dangerous drug that could result in the denial of health care. A pharmacy furnishing dangerous drugs pursuant to this paragraph may only furnish a quantity sufficient to alleviate the temporary shortage.

(5) A patient or to another pharmacy pursuant to a prescription or as otherwise authorized by law.

(6) A health care provider that is not a pharmacy but that is authorized to purchase dangerous drugs.

(7) To another pharmacy under common control.

(b) Notwithstanding any other provision of law, a violation of this section by either a pharmacy whose primary or sole business is filling prescriptions for patients of long-term care facilities or a person engaged in a prohibited transaction with a pharmacy whose primary or sole business is filling prescriptions for patients of long-term care facilities may subject the persons who committed the violation to a fine not to exceed the amount specified in Section 125.9 for each occurrence pursuant to a citation issued by the board.

(c) Amounts due from any person under this section on or after January 1, 2005, shall be offset as provided under Section 12419.5 of the Government Code. Amounts received by the board under this section shall be deposited into the Pharmacy Board Contingent Fund.

(d) For purposes of this section, ''common control'' means the power to direct or cause the direction of the management and policies of another person whether by ownership, by voting rights, by contract, or by other means.

(e) For purposes of subdivision (b) of this section and subdivision (s) of Section 4301, ''long-term care facility'' shall have the same meaning given the term in Section 1418 of the Health and Safety Code.

SEC. 24. Section 4160 of the Business and Professions Code is amended to read:

4160. (a) A person may not act as a wholesaler of any dangerous drug or dangerous device unless he or she has obtained a license from the board.

(b) Upon approval by the board and the payment of the required fee, the board shall issue a license to the applicant.

(c) A separate license shall be required for each place of business owned or operated by a wholesaler. Each license shall be renewed annually and shall not be transferable.

(d) The board shall not issue or renew a wholesaler license until the wholesaler designates an exemptee-in-charge and notifies the board in writing of the identity and license number of that exemptee-in-charge. The exemptee-in-charge shall be responsible for the wholesaler's compliance with state and federal laws governing wholesalers. A

wholesaler shall designate, and notify the board of, a new exemptee-in-charge within 30 days of the date that the prior exemptee-in-charge ceases to be the exemptee-in-charge. A pharmacist may be designated as the exemptee-in-charge.

(e) For purposes of this section, ''exemptee-in-charge'' means a person granted a certificate of exemption pursuant to Section 4053, or a registered pharmacist, who is the supervisor or manager of the facility.

(f) A drug manufacturer licensed by the Food and Drug Administration or pursuant to Section 111615 of the Health and Safety Code that only ships dangerous drugs or dangerous devices of its own manufacture is exempt from this section.

(g) This section shall become inoperative and is repealed on January 1, 2006, unless a later enacted statute, that becomes operative on or before January 1, 2006, amends or repeals that date.

SEC. 25. Section 4160 is added to the Business and Professions Code, to read:

4160. (a) A person may not act as a wholesaler of any dangerous drug or dangerous device unless he or she has obtained a license from the board.

(b) Upon approval by the board and the payment of the required fee, the board shall issue a license to the applicant.

(c) A separate license shall be required for each place of business owned or operated by a wholesaler. Each license shall be renewed annually and shall not be transferable.

(d) The board shall not issue or renew a wholesaler license until the wholesaler identifies a designated representative-in-charge and notifies the board in writing of the identity and license number of that designated representative. The designated representative-in-charge shall be responsible for the wholesaler's compliance with state and federal laws governing wholesalers. A wholesaler shall identify and notify the board of a new designated representative-in-charge within 30 days of the date that the prior designated representative-in-charge ceases to be the designated representative-in-charge. A pharmacist may be identified as the designated representative-in-charge.

(e) A drug manufacturer licensed by the Food and Drug Administration or licensed pursuant to Section 111615 of the Health and Safety Code that only distributes dangerous drugs and dangerous devices of its own manufacture is exempt from this section and Section 4161.

(f) The board may issue a temporary license, upon conditions and for periods of time as the board determines to be in the public interest. A temporary license fee shall be fixed by the board at an amount not to exceed the annual fee for renewal of a license to conduct business as a wholesaler.

(g) This section shall become operative on January 1, 2006.

SEC. 29. Section 4162 of the Business and Professions Code is repealed.

SEC. 30. Section 4162 is added to the Business and Professions Code, to read:

4162. (a) (1) An applicant for the issuance or renewal of a wholesaler license shall submit a surety bond of one hundred thousand dollars ($100,000) or other equivalent means of security acceptable to the board payable to the Pharmacy Board Contingent Fund. The purpose of the surety bond is to secure payment of any administrative fine imposed by the board and any cost recovery ordered pursuant to Section 125.3.

(2) For purposes of paragraph (1), the board may accept a surety bond less than one hundred thousand dollars ($100,000) if the annual gross receipts of the previous tax year for the wholesaler is ten million dollars ($10,000,000) or less, in which case the surety bond shall be twenty-five thousand dollars ($25,000).

(3) A person to whom an approved new drug application has been issued by the United States Food and Drug Administration who engages in the wholesale distribution of only the dangerous drug specified in the new drug application, and is licensed or applies for licensure as a wholesaler, shall not be required to post a surety bond as provided in paragraph (1).

(4) For licensees subject to paragraph (2) or (3), the board may require a bond up to one hundred thousand dollars ($100,000) for any licensee who has been disciplined by any state or federal agency or has been issued an administrative fine pursuant to this chapter.

(b) The board may make a claim against the bond if the licensee fails to pay a fine within 30 days after the order imposing the fine, or costs become final.

(c) A single surety bond or other equivalent means of security acceptable to the board shall satisfy the requirement of subdivision (a) for all licensed sites under common control as defined in Section 4126.5.

(d) This section shall become operative on January 1, 2006, and 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 those dates.

SEC. 31. Section 4163 of the Business and Professions Code is amended to read:

4163. (a) No manufacturer or wholesaler shall furnish any dangerous drugs or dangerous devices to any unauthorized persons.

(b) No person shall acquire dangerous drugs or dangerous devices from a person not authorized by law to possess or furnish those dangerous drugs or dangerous devices. When the person acquiring the

dangerous drugs or dangerous devices is a wholesaler, the obligation of the wholesaler shall be limited to obtaining confirmation of licensure of those sources from whom it has not previously acquired dangerous drugs or dangerous devices.

(c) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

SEC. 32. Section 4163 is added to the Business and Professions Code, to read:

4163. (a) A manufacturer or wholesaler may not furnish a dangerous drug or dangerous device to an unauthorized person.

(b) Dangerous drugs or dangerous devices shall be acquired from a person authorized by law to possess or furnish dangerous drugs or dangerous devices. When the person acquiring the dangerous drugs or dangerous devices is a wholesaler, the obligation of the wholesaler shall be limited to obtaining confirmation of licensure of those sources from whom it has not previously acquired dangerous drugs or dangerous devices.

(c) A wholesaler or pharmacy may not sell, trade, or transfer a dangerous drug at wholesale without providing a pedigree.

(d) A wholesaler or pharmacy may not acquire a dangerous drug without receiving a pedigree.

(e) This section shall become operative on January 1, 2007.

SEC. 33. Section 4163.5 is added to the Business and Professions Code, to read:

4163.5. The board may extend the date for compliance with the requirement for a pedigree set forth in Section 4163 until January 1, 2008, if it determines that manufacturers or wholesalers require additional time to implement electronic technologies to track the distribution of dangerous drugs within the state. A determination by the board to extend the deadline for providing pedigrees 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. 33.1. Section 4163.6 is added to the Business and Professions Code, to read:

4163.6. If the Legislature determines that it is not yet economically and technically feasible for pharmacies to implement electronic technologies to track the distribution of dangerous drugs within the state, the Legislature may extend the date for compliance with the requirement for a pedigree for pharmacies set forth in Section 4163 until January 1, 2009.

SEC. 34. Section 4164 of the Business and Professions Code is amended to read:

4164. (a) All wholesalers licensed by the board and all manufacturers who distribute controlled substances, dangerous drugs, or dangerous devices within or into this state shall report to the board all sales of dangerous drugs and controlled substances that are subject to abuse, as determined by the board.

(b) This section shall become inoperative and is repealed on January 1, 2006, unless a later enacted statute, that becomes operative on or before January 1, 2006, amends or repeals that date.

SEC. 35. Section 4164 is added to the Business and Professions Code, to read:

4164. (a) A wholesaler licensed by the board that distributes controlled substances, dangerous drugs, or dangerous devices within or into this state shall report to the board all sales of dangerous drugs and controlled substances that are subject to abuse, as determined by the board.

(b) Each wholesaler shall develop and maintain a system for tracking individual sales of dangerous drugs at preferential or contract prices to pharmacies that primarily or solely dispense prescription drugs to patients of long-term care facilities. The system shall be capable of identifying purchases of any dangerous drug at preferential or contract prices by customers that vary significantly from prior ordering patterns for the same customer, including by identifying purchases in the preceding 12 calendar months by that customer or similar customers and identifying current purchases that exceed prior purchases by either that customer or similar customers by a factor of 20 percent. Each wholesaler shall have the tracking system required by this subdivision in place no later than January 1, 2006.

(c) Upon written, oral, or electronic request by the board, a wholesaler shall furnish data tracked pursuant to subdivision (b) to the board in written, hardcopy, or electronic form. The board shall specify the dangerous drugs, the customers, or both the dangerous drugs and customers for which data are to be furnished, and the wholesaler shall have 30 calendar days to comply with the request.

(d) As used in this section, ''preferential or contract prices'' means and refers to purchases by contract of dangerous drugs at prices below the market wholesale price for those drugs.

(e) This section shall become operative on January 1, 2006.

SEC. 36. Section 4165 of the Business and Professions Code is amended to read:

4165. A wholesaler licensed by the board who sells or transfers any dangerous drug or dangerous device into this state or who receives, by sale or otherwise, any dangerous drug or dangerous device from any person in this state shall, on request, furnish an authorized officer of the law with all records or other documentation of that sale or transfer.

SEC. 37. Section 4166 of the Business and Professions Code is amended to read:

4166. (a) Any wholesaler that uses the services of any carrier, including, but not limited to, the United States Postal Service or any common carrier, shall be liable for the security and integrity of any dangerous drugs or dangerous devices through that carrier until the drugs or devices are delivered to the transferee at its board-licensed premises.

(b) Nothing in this section is intended to affect the liability of a wholesaler or other distributor for dangerous drugs or dangerous devices after their delivery to the transferee.

SEC. 38. Section 4168 is added to the Business and Professions Code, to read:

4168. A county or municipality may not issue a business license for any establishment that requires a wholesaler license unless the establishment possesses a current wholesaler license issued by the board. For purposes of this section, an ''establishment'' is the licensee's physical location in California.

SEC. 39. Section 4169 is added to the Business and Professions Code, to read:

4169. (a) A person or entity may not do any of the following:

(1) Purchase, trade, sell, or transfer dangerous drugs or dangerous devices at wholesale with a person or entity that is not licensed with the board as a wholesaler or pharmacy, in violation of Section 4163.

(2) Purchase, trade, sell, or transfer dangerous drugs that the person knew or reasonably should have known were adulterated, as set forth in Article 2 (commencing with Section 111250) of Chapter 6 of Part 5 of Division 104 of the Health and Safety Code.

(3) Purchase, trade, sell, or transfer dangerous drugs that the person knew or reasonably should have known were misbranded, as defined in Section 111335 of the Health and Safety Code.

(4) Purchase, trade, sell, or transfer dangerous drugs or dangerous devices after the beyond use date on the label.

(5) Fail to maintain records of the acquisition or disposition of dangerous drugs or dangerous devices for at least three years.

(b) Notwithstanding any other provision of law, a violation of this section may subject the person or entity that has committed the violation to a fine not to exceed the amount specified in Section 125.9 for each occurrence, pursuant to a citation issued by the board.

(c) Amounts due from any person under this section shall be offset as provided under Section 12419.5 of the Government Code. Amounts received by the board under this section shall be deposited into the Pharmacy Board Contingent Fund.

(d) This section shall not apply to a pharmaceutical manufacturer licensed by the Food and Drug Administration or by the State Department of Health Services.

(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. 40. Section 4169 is added to the Business and Professions Code, to read:

4169. (a) A person or entity may not do any of the following:

(1) Purchase, trade, sell, or transfer dangerous drugs or dangerous devices at wholesale with a person or entity that is not licensed with the board as a wholesaler or pharmacy.

(2) Purchase, trade, sell, or transfer dangerous drugs that the person knew or reasonably should have known were adulterated, as set forth in Article 2 (commencing with Section 111250) of Chapter 6 of Part 5 of Division 104 of the Health and Safety Code.

(3) Purchase, trade, sell, or transfer dangerous drugs that the person knew or reasonably should have known were misbranded, as defined in Section 111335 of the Health and Safety Code.

(4) Purchase, trade, sell, or transfer dangerous drugs or dangerous devices after the beyond use date on the label.

(5) Fail to maintain records of the acquisition or disposition of dangerous drugs or dangerous devices for at least three years.

(b) Notwithstanding any other provision of law, a violation of this section or of subdivision (c) or (d) of Section 4163 may subject the person or entity that has committed the violation to a fine not to exceed the amount specified in Section 125.9 for each occurrence, pursuant to a citation issued by the board.

(c) Amounts due from any person under this section shall be offset as provided under Section 12419.5 of the Government Code. Amounts received by the board under this section shall be deposited into the Pharmacy Board Contingent Fund.

(d) This section shall not apply to a pharmaceutical manufacturer licensed by the Food and Drug Administration or by the State Department of Health Services.

(e) This section shall become operative on January 1, 2007.

SEC. 41. Section 4196 of the Business and Professions Code is amended to read:

4196. (a) No person shall conduct a veterinary food-animal drug retailer in the State of California unless he or she has obtained a license from the board. A license shall be required for each veterinary food-animal drug retailer owned or operated by a specific person. A separate license shall be required for each of the premises of any person operating a veterinary food-animal drug retailer in more than one

location. The license shall be renewed annually and shall not be transferable.

(b) The board may issue a temporary license, upon conditions and for periods of time as the board determines to be in the public interest. A temporary license fee shall be fixed by the board at an amount not to exceed the annual fee for renewal of a license to conduct a veterinary food-animal drug retailer.

(c) No person other than a pharmacist, an intern pharmacist, an exempt person, an authorized officer of the law, or a person authorized to prescribe, shall be permitted in that area, place, or premises described in the permit issued by the board pursuant to Section 4041, wherein veterinary food-animal drugs are stored, possessed, or repacked. A pharmacist or exemptee shall be responsible for any individual who enters the veterinary food-animal drug retailer for the purpose of performing clerical, inventory control, housekeeping, delivery, maintenance, or similar functions relating to the veterinary food-animal drug retailer.

(d) The board shall not issue or renew a veterinary food-animal retailer license until the veterinary food-animal drug retailer designates an exemptee-in-charge and notifies the board in writing of the identity and license number of that exemptee. The exemptee-in-charge shall be responsible for the veterinary food-animal drug retailer's compliance with state and federal laws governing veterinary food-animal drug retailers. Each veterinary food-animal drug retailer shall designate, and notify the board of, a new exemptee-in-charge within 30 days of the date that the prior exemptee-in-charge ceases to be the exemptee-in-charge. A pharmacist may be designated as the exemptee-in-charge.

(e) For purposes of this section, ''exemptee-in-charge'' means a person granted a certificate of exemption pursuant to Section 4053, or a registered pharmacist, who is the supervisor or manager of the facility.

(f) This section shall become inoperative and is repealed on January 1, 2006, unless a later enacted statute, that becomes operative on or before January 1, 2006, amends or repeals that date.

SEC. 42. Section 4196 is added to the Business and Professions Code, to read:

4196. (a) No person shall conduct a veterinary food-animal drug retailer in the State of California unless he or she has obtained a license from the board. A license shall be required for each veterinary food-animal drug retailer owned or operated by a specific person. A separate license shall be required for each of the premises of any person operating a veterinary food-animal drug retailer in more than one location. The license shall be renewed annually and shall not be transferable.

(b) The board may issue a temporary license, upon conditions and for periods of time as the board determines to be in the public interest. A temporary license fee shall be fixed by the board at an amount not to exceed the annual fee for renewal of a license to conduct a veterinary food-animal drug retailer.

(c) No person other than a pharmacist, an intern pharmacist, a designated representative, an authorized officer of the law, or a person authorized to prescribe, shall be permitted in that area, place, or premises described in the permit issued by the board pursuant to Section 4041, wherein veterinary food-animal drugs are stored, possessed, or repacked. A pharmacist or designated representative shall be responsible for any individual who enters the veterinary food-animal drug retailer for the purpose of performing clerical, inventory control, housekeeping, delivery, maintenance, or similar functions relating to the veterinary food-animal drug retailer.

(d) The board shall not issue or renew a veterinary food-animal retailer license until the veterinary food-animal drug retailer identifies a designated representative-in-charge and notifies the board in writing of the identity and license number of that designated representative. The designated representative-in-charge shall be responsible for the veterinary food-animal drug retailer's compliance with state and federal laws governing veterinary food-animal drug retailers. Each veterinary food-animal drug retailer shall identify, and notify the board of, a new designated representative-in-charge within 30 days of the date that the prior designated representative-in-charge ceases to be the designated representative-in-charge. A pharmacist may be identified as the designated representative-in-charge.

(e) For purposes of this section, designated representative-in-charge means a person granted a designated representative license pursuant to Section 4053, or a registered pharmacist, who is the supervisor or manager of the facility.

(f) This section shall become operative on January 1, 2006.

SEC. 43. Section 4301 of the Business and Professions Code is amended to read:

4301. The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

(a) Gross immorality.

(b) Incompetence.

(c) Gross negligence.

(d) The clearly excessive furnishing of controlled substances in violation of subdivision (a) of Section 11153 of the Health and Safety Code.

(e) The clearly excessive furnishing of controlled substances in violation of subdivision (a) of Section 11153.5 of the Health and Safety Code. Factors to be considered in determining whether the furnishing of controlled substances is clearly excessive shall include, but not be limited to, the amount of controlled substances furnished, the previous ordering pattern of the customer (including size and frequency of orders), the type and size of the customer, and where and to whom the customer distributes its product.

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

(i) Except as otherwise authorized by law, knowingly selling, furnishing, giving away, or administering or offering to sell, furnish, give away, or administer any controlled substance to an addict.

(j) The violation of any of the statutes of this state or of the United States regulating controlled substances and dangerous drugs.

(k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.

(*l*) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time

for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw 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.

(m) The cash compromise of a charge of violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code relating to the Medi-Cal program. The record of the compromise is conclusive evidence of unprofessional conduct.

(n) The revocation, suspension, or other discipline by another state of a license to practice pharmacy, operate a pharmacy, or do any other act for which a license is required by this chapter.

(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board.

(p) Actions or conduct that would have warranted denial of a license.

(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the board.

(r) The selling, trading, transferring, or furnishing of drugs obtained pursuant to Section 256b of Title 42 of the United States Code to any person a licensee knows or reasonably should have known, not to be a patient of a covered entity, as defined in paragraph (4) of subsection (a) of Section 256b of Title 42 of the United States Code.

(s) This section shall become inoperative and is repealed on January 1, 2006, unless a later enacted statute, that becomes operative on or before January 1, 2006, amends or repeals that date.

SEC. 44. Section 4301 is added to the Business and Professions Code, to read:

4301. The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

(a) Gross immorality.

(b) Incompetence.

(c) Gross negligence.

(d) The clearly excessive furnishing of controlled substances in violation of subdivision (a) of Section 11153 of the Health and Safety Code.

(e) The clearly excessive furnishing of controlled substances in violation of subdivision (a) of Section 11153.5 of the Health and Safety Code. Factors to be considered in determining whether the furnishing of controlled substances is clearly excessive shall include, but not be limited to, the amount of controlled substances furnished, the previous ordering pattern of the customer (including size and frequency of orders), the type and size of the customer, and where and to whom the customer distributes its product.

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

(i) Except as otherwise authorized by law, knowingly selling, furnishing, giving away, or administering or offering to sell, furnish, give away, or administer any controlled substance to an addict.

(j) The violation of any of the statutes of this state or of the United States regulating controlled substances and dangerous drugs.

(k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.

(*l*) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time

for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw 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.

(m) The cash compromise of a charge of violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code relating to the Medi-Cal program. The record of the compromise is conclusive evidence of unprofessional conduct.

(n) The revocation, suspension, or other discipline by another state of a license to practice pharmacy, operate a pharmacy, or do any other act for which a license is required by this chapter.

(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board.

(p) Actions or conduct that would have warranted denial of a license.

(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the board.

(r) The selling, trading, transferring, or furnishing of drugs obtained pursuant to Section 256b of Title 42 of the United States Code to any person a licensee knows or reasonably should have known, not to be a patient of a covered entity, as defined in paragraph (4) of subsection (a) of Section 256b of Title 42 of the United States Code.

(s) The clearly excessive furnishing of dangerous drugs by a wholesaler to a pharmacy that primarily or solely dispenses prescription drugs to patients of long-term care facilities. Factors to be considered in determining whether the furnishing of dangerous drugs is clearly excessive shall include, but not be limited to, the amount of dangerous drugs furnished to a pharmacy that primarily or solely dispenses prescription drugs to patients of long-term care facilities, the previous ordering pattern of the pharmacy, and the general patient population to whom the pharmacy distributes the dangerous drugs. That a wholesaler has established, and employs, a tracking system that complies with the requirements of subdivision (b) of Section 4164 shall be considered in determining whether there has been a violation of this subdivision. This provision shall not be interpreted to require a wholesaler to obtain personal medical information or be authorized to permit a wholesaler to have access to personal medical information except as otherwise authorized by Section 56 and following of the Civil Code.

(t) This section shall become operative on January 1, 2006.

SEC. 45. Section 4305.5 of the Business and Professions Code is amended to read:

4305.5. (a) Any person who has obtained a license to conduct a wholesaler or veterinary food-animal drug retailer, shall notify the board within 30 days of the termination of employment of any pharmacist or exemptee who takes charge of, or acts as manager of the licensee. Failure to notify the board within the 30-day period shall constitute grounds for disciplinary action.

(b) Any person who has obtained a license to conduct a wholesaler or veterinary food-animal drug retailer, who willfully fails to notify the board of the termination of employment of any pharmacist or exemptee who takes charge of, or acts as manager of the licensee, and who continues to operate the licensee in the absence of a pharmacist or an exemptee approved for that location, shall be subject to summary suspension or revocation of his or her license to conduct a wholesaler or veterinary food-animal drug retailer.

(c) Any pharmacist or exemptee who takes charge of, or acts as manager of a wholesaler or veterinary food-animal drug retailer, who terminates his or her employment at the licensee, shall notify the board within 30 days of the termination of employment. Failure to notify the board within the 30-day period shall constitute grounds for disciplinary action.

(d) This section shall become inoperative and is repealed on January 1, 2006, unless a later enacted statute, that becomes operative on or before January 1, 2006, amends or repeals that date.

SEC. 46. Section 4305.5 is added to the Business and Professions Code, to read:

4305.5. (a) A person who has obtained a license to conduct a wholesaler or veterinary food-animal drug retailer, shall notify the board within 30 days of the termination of employment of the designated representative-in-charge. Failure to notify the board within the 30-day period shall constitute grounds for disciplinary action.

(b) A person who has obtained a license to conduct a wholesaler or veterinary food-animal drug retailer, who willfully fails to notify the board of the termination of employment of the designated representative-in-charge, and who continues to operate the licensee in the absence of the designated representative-in-charge for that location, shall be subject to summary suspension or revocation of his or her license to conduct a wholesaler or veterinary food-animal drug retailer.

(c) A designated representative-in-charge of a wholesaler or veterinary food-animal drug retailer, who terminates his or her employment at the licensee, shall notify the board within 30 days of the

termination of employment. Failure to notify the board within the 30-day period shall constitute grounds for disciplinary action.

(d) This section shall become operative on January 1, 2006.

SEC. 47. Section 4331 of the Business and Professions Code is amended to read:

4331. (a) Any person who is neither a pharmacist nor an exemptee and who takes charge of a wholesaler or veterinary food-animal drug retailer or who dispenses a prescription or furnishes dangerous devices except as otherwise provided in this chapter is guilty of a misdemeanor.

(b) Any person who has obtained a license to conduct a veterinary food-animal drug retailer and who fails to place in charge of that veterinary food-animal drug retailer a pharmacist or exemptee, or any person who, by himself or herself, or by any other person, permits the dispensing of prescriptions, except by a pharmacist or exemptee, or as otherwise provided in this chapter, is guilty of a misdemeanor.

(c) Any person who has obtained a license to conduct a wholesaler and who fails to place in charge of that wholesaler a pharmacist or exemptee, or any person who, by himself or herself, or by any other person, permits the furnishing of dangerous drugs or dangerous devices, except by a pharmacist or exemptee, or as otherwise provided in this chapter, is guilty of a misdemeanor.

(d) This section shall become inoperative and is repealed on January 1, 2006, unless a later enacted statute, that becomes operative on or before January 1, 2006, amends or repeals that date.

SEC. 48. Section 4331 is added to the Business and Professions Code, to read:

4331. (a) A person who is neither a pharmacist nor a designated representative and who takes charge of a wholesaler or veterinary food-animal drug retailer or who dispenses a prescription or furnishes dangerous devices except as otherwise provided in this chapter is guilty of a misdemeanor.

(b) A person who has obtained a license to conduct a veterinary food-animal drug retailer and who fails to place in charge of that veterinary food-animal drug retailer a pharmacist or designated representative, or any person who, by himself or herself, or by any other person, permits the dispensing of prescriptions, except by a pharmacist or designated representative, or as otherwise provided in this chapter, is guilty of a misdemeanor.

(c) A person who has obtained a license to conduct a wholesaler and who fails to place in charge of that wholesaler a pharmacist or designated representative, or any person who, by himself or herself, or by any other person, permits the furnishing of dangerous drugs or dangerous devices, except by a pharmacist or designated representative, or as otherwise provided in this chapter, is guilty of a misdemeanor.

(d) This section shall become operative on January 1, 2006.

SEC. 49. Section 4400 of the Business and Professions Code is amended to read:

4400. The amount of fees and penalties prescribed by this chapter, except as otherwise provided, is that fixed by the board according to the following schedule:

(a) The fee for a nongovernmental pharmacy license shall be three hundred forty dollars ($340) and may be increased to four hundred dollars ($400).

(b) The fee for a nongovernmental pharmacy or medical device retailer annual renewal shall be one hundred seventy-five dollars ($175) and may be increased to two hundred fifty dollars ($250).

(c) The fee for the pharmacist application and examination shall be one hundred fifty-five dollars ($155) and may be increased to one hundred eighty-five dollars ($185).

(d) The fee for regrading an examination shall be seventy-five dollars ($75) and may be increased to eighty-five dollars ($85). If an error in grading is found and the applicant passes the examination, the regrading fee shall be refunded.

(e) The fee for a pharmacist license and biennial renewal shall be one hundred fifteen dollars ($115) and may be increased to one hundred fifty dollars ($150).

(f) The fee for a wholesaler license and annual renewal shall be five hundred fifty dollars ($550) and may be increased to six hundred dollars ($600).

(g) The fee for a hypodermic license and renewal shall be ninety dollars ($90) and may be increased to one hundred twenty-five dollars ($125).

(h) The fee for application and investigation for an exemptee license under Section 4053 shall be seventy-five dollars ($75) and may be increased to one hundred dollars ($100), except for a veterinary food-animal drug retailer exemptee, for whom the fee shall be one hundred dollars ($100).

(i) The fee for an exemptee license and annual renewal under Section 4053 shall be one hundred ten dollars ($110) and may be increased to one hundred fifty dollars ($150), except that the fee for the issuance of a veterinary food-animal drug retailer exemptee license shall be one hundred fifty dollars ($150), for renewal one hundred ten dollars ($110), which may be increased to one hundred fifty dollars ($150), and for filing a late renewal fifty-five dollars ($55).

(j) The fee for an out-of-state drug distributor's license and annual renewal issued pursuant to Section 4120 shall be five hundred fifty dollars ($550) and may be increased to six hundred dollars ($600).

(k) The fee for registration and annual renewal of providers of continuing education shall be one hundred dollars ($100) and may be increased to one hundred thirty dollars ($130).

(*l*) The fee for evaluation of continuing education courses for accreditation shall be set by the board at an amount not to exceed forty dollars ($40) per course hour.

(m) The fee for evaluation of applications submitted by graduates of foreign colleges of pharmacy or colleges of pharmacy not recognized by the board shall be one hundred sixty-five dollars ($165) and may be increased to one hundred seventy-five dollars ($175).

(n) The fee for an intern license or extension shall be sixty-five dollars ($65) and may be increased to seventy-five dollars ($75). The fee for transfer of intern hours or verification of licensure to another state shall be fixed by the board not to exceed twenty dollars ($20).

(o) The board may, by regulation, provide for the waiver or refund of the additional fee for the issuance of a certificate where the certificate is issued less than 45 days before the next succeeding regular renewal date.

(p) The fee for the reissuance of any license, or renewal thereof, that has been lost or destroyed or reissued due to a name change is thirty dollars ($30).

(q) The fee for the reissuance of any license, or renewal thereof, that must be reissued because of a change in the information, is sixty dollars ($60) and may be increased to one hundred dollars ($100).

(r) It is the intent of the Legislature that, in setting fees pursuant to this section, the board shall seek to maintain a reserve in the Pharmacy Board Contingent Fund equal to approximately one year's operating expenditures.

(s) The fee for any applicant for a clinic permit is three hundred forty dollars ($340) and may be increased to four hundred dollars ($400) for each permit. The annual fee for renewal of the permit is one hundred seventy-five dollars ($175) and may be increased to two hundred fifty dollars ($250) for each permit.

(t) The board shall charge a fee for the processing and issuance of a registration to a pharmacy technician and a separate fee for the biennial renewal of the registration. The registration fee shall be twenty-five dollars ($25) and may be increased to fifty dollars ($50). The biennial renewal fee shall be twenty-five dollars ($25) and may be increased to fifty dollars ($50).

(u) The fee for a veterinary food-animal drug retailer license shall be four hundred dollars ($400). The annual renewal fee for a veterinary food-animal drug retailer shall be two hundred fifty dollars ($250).

(v) The fee for issuance of a retired license pursuant to Section 4200.5 shall be thirty dollars ($30).

(w) This section shall become inoperative and is repealed on January 1, 2006, unless a later enacted statute, that becomes operative on or before January 1, 2006, amends or repeals that date.

SEC. 50. Section 4400 is added to the Business and Professions Code, to read:

4400. The amount of fees and penalties prescribed by this chapter, except as otherwise provided is that fixed by the board according to the following schedule:

(a) The fee for a nongovernmental pharmacy license shall be three hundred forty dollars ($340) and may be increased to four hundred dollars ($400).

(b) The fee for a nongovernmental pharmacy annual renewal shall be one hundred seventy-five dollars ($175) and may be increased to two hundred fifty dollars ($250).

(c) The fee for the pharmacist application and examination shall be one hundred fifty-five dollars ($155) and may be increased to one hundred eighty-five dollars ($185).

(d) The fee for regrading an examination shall be seventy-five dollars ($75) and may be increased to eighty-five dollars ($85). If an error in grading is found and the applicant passes the examination, the regrading fee shall be refunded.

(e) The fee for a pharmacist license and biennial renewal shall be one hundred fifteen dollars ($115) and may be increased to one hundred fifty dollars ($150).

(f) The fee for a wholesaler license and annual renewal shall be five hundred fifty dollars ($550) and may be increased to six hundred dollars ($600).

(g) The fee for a hypodermic license and renewal shall be ninety dollars ($90) and may be increased to one hundred twenty-five dollars ($125).

(h) The fee for application and investigation for a designated representative license issued pursuant to Section 4053 shall be seventy-five dollars ($75) and may be increased to one hundred dollars ($100), except for a veterinary food-animal drug retailer designated representative, for whom the fee shall be one hundred dollars ($100).

(i) The fee for a designated representative license and annual renewal under Section 4053 shall be one hundred ten dollars ($110) and may be increased to one hundred fifty dollars ($150), except that the fee for the issuance of a veterinary food-animal drug retailer designated representative license shall be one hundred fifty dollars ($150), for renewal one hundred ten dollars ($110), which may be increased to one hundred fifty dollars ($150), and for filing a late renewal fifty-five dollars ($55).

(j) The fee for a nonresident wholesaler's license and annual renewal issued pursuant to Section 4120 shall be five hundred fifty dollars ($550) and may be increased to six hundred dollars ($600).

(k) The fee for registration and annual renewal of providers of continuing education shall be one hundred dollars ($100) and may be increased to one hundred thirty dollars ($130).

(*l*) The fee for evaluation of continuing education courses for accreditation shall be set by the board at an amount not to exceed forty dollars ($40) per course hour.

(m) The fee for evaluation of applications submitted by graduates of foreign colleges of pharmacy or colleges of pharmacy not recognized by the board shall be one hundred sixty-five dollars ($165) and may be increased to one hundred seventy-five dollars ($175).

(n) The fee for an intern license or extension shall be sixty-five dollars ($65) and may be increased to seventy-five dollars ($75). The fee for transfer of intern hours or verification of licensure to another state shall be fixed by the board not to exceed twenty dollars ($20).

(o) The board may, by regulation, provide for the waiver or refund of the additional fee for the issuance of a certificate where the certificate is issued less than 45 days before the next succeeding regular renewal date.

(p) The fee for the reissuance of any license, or renewal thereof, that has been lost or destroyed or reissued due to a name change is thirty dollars ($30).

(q) The fee for the reissuance of any license, or renewal thereof, that must be reissued because of a change in the information, is sixty dollars ($60) and may be increased to one hundred dollars ($100).

(r) It is the intent of the Legislature that, in setting fees pursuant to this section, the board shall seek to maintain a reserve in the Pharmacy Board Contingent Fund equal to approximately one year's operating expenditures.

(s) The fee for any applicant for a clinic permit is three hundred forty dollars ($340) and may be increased to four hundred dollars ($400) for each permit. The annual fee for renewal of the permit is one hundred seventy-five dollars ($175) and may be increased to two hundred fifty dollars ($250) for each permit.

(t) The board shall charge a fee for the processing and issuance of a registration to a pharmacy technician and a separate fee for the biennial renewal of the registration. The registration fee shall be twenty-five dollars ($25) and may be increased to fifty dollars ($50). The biennial renewal fee shall be twenty-five dollars ($25) and may be increased to fifty dollars ($50).

(u) The fee for a veterinary food-animal drug retailer license shall be four hundred dollars ($400). The annual renewal fee for a veterinary food-animal drug retailer shall be two hundred fifty dollars ($250).

(v) The fee for issuance of a retired license pursuant to Section 4200.5 shall be thirty dollars ($30).

(w) This section shall become operative on January 1, 2006.

SEC. 51. This act shall become operative only if Assembly Bill 2682 is also enacted and becomes effective on or before January 1, 2005.

SEC. 52. Sections 10.5 and 11.5 of this bill incorporate amendments to Section 4059.5 of the Business and Professions Code proposed by both this bill and SB 1913. Sections 10.5 and 11.5 shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2005, (2) each bill amends Section 4059.5 of the Business and Professions Code, and (3) this bill is enacted after SB 1913, in which case Sections 10 and 11 of this bill shall not become operative.

SEC. 53. Sections 12.5 and 13.5 of this bill incorporate amendments to Section 4081 of the Business and Professions Code proposed by both this bill and SB 1913. Sections 12.5 and 13.5 shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2005, (2) each bill amends Section 4081 of the Business and Professions Code, and (3) this bill is enacted after SB 1913, in which case Sections 12 and 13 of this bill shall not become operative.

SEC. 54. 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 858

An act to amend Sections 8502, 8616.5, 8802, 8912, and 9000 of, and to add Sections 7660.5 and 7907.5 to, the Family Code, and to amend Section 293 of, and to amend and renumber Section 18965 of, the Welfare and Institutions Code, relating to minors.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 2004.]

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

SECTION 1. Section 7660.5 is added to the Family Code, to read:

7660.5. Notwithstanding any other provision of law, if a presumed father waives the right to notice pursuant to Section 7660 in writing by

executing a form developed by the department using existing resources before a notary public or other person authorized to perform notarial acts, no notice, relinquishment for, or consent to adoption of the child shall be required from him for the adoption proceeding to proceed. This shall be a voluntary and informed waiver without undue influence. If the child is an Indian child as defined under the Indian Child Welfare Act (ICWA), any waiver of consent by an Indian presumed father shall be executed in accordance with the requirements for voluntary adoptions set forth in Section 1913 of Title 25 of the United States Code. The waiver shall not affect the rights of any known federally recognized Indian tribe or tribes from which the child or the presumed father may be descended to notification of, or participation in, adoption proceedings as provided by the ICWA. Notice that the waiver has been executed shall be given to any known federally recognized Indian tribe or tribes from which the child or the presumed father may be descended, as required by the ICWA.

SEC. 2. Section 7907.5 is added to the Family Code, to read:

7907.5. (a) A child who is born in this state and placed for adoption in this state with a resident of this state is not subject to the provisions of the Interstate Compact on the Placement of Children.

(b) A child who is born in this state and placed for adoption with a person who is not a resident of this state is subject to the provisions of the Interstate Compact on the Placement of Children, regardless of whether the adoption petition is filed in this state. In interstate placements, this state shall be deemed the sending state for any child born in the state.

SEC. 3. Section 8502 of the Family Code is amended to read:

8502. (a) ''Adoption service provider'' means any of the following:

(1) A licensed private adoption agency.

(2) An individual who has presented satisfactory evidence to the department that he or she is a licensed clinical social worker who also has a minimum of five years of experience providing professional social work services while employed by a licensed California adoption agency or the department.

(3) In a state other than California, or a country other than the United States, an adoption agency licensed or otherwise approved under the laws of that state or country, or an individual who is licensed or otherwise certified as a clinical social worker under the laws of that state or country.

(4) An individual who has presented satisfactory evidence to the department that he or she is a licensed marriage and family therapist who has a minimum of five years of experience providing professional adoption casework services while employed by a licensed California adoption agency or the department. The department shall review the qualifications of each individual to determine if he or she has performed

professional adoption casework services for five years as required by this section while employed by a licensed California adoption agency or the department.

(b) If, in the case of a birth parent located in California, at least three adoption service providers are not reasonably available, or, in the case of a birth parent located outside of California or outside of the United States who has contacted at least three potential adoption service providers and been unsuccessful in obtaining the services of an adoption service provider who is reasonably available and willing to provide services, independent legal counsel for the birth parent may serve as an adoption service provider pursuant to subdivision (e) of Section 8801.5. ''Reasonably available'' means that an adoption service provider is all of the following:

(1) Available within five days for an advisement of rights pursuant to Section 8801.5, or within 24 hours for the signing of the placement agreement pursuant to paragraph (3) of subdivision (b) of Section 8801.3.

(2) Within 100 miles of the birth mother.

(3) Available for a cost not exceeding five hundred dollars ($500) to make an advisement of rights and to witness the signing of the placement agreement.

(c) Where an attorney acts as an adoption service provider, the fee to make an advisement of rights and to witness the signing of the placement agreement shall not exceed five hundred dollars ($500).

SEC. 4. Section 8616.5 of the Family Code is amended to read:

8616.5. (a) The Legislature finds and declares that some adoptive children may benefit from either direct or indirect contact with birth relatives, including the birth parent or parents, after being adopted. Postadoption contact agreements are intended to ensure children of an achievable level of continuing contact when contact is beneficial to the children and the agreements are voluntarily entered into by birth relatives, including the birth parent or parents, and adoptive parents.

(b) (1) Nothing in the adoption laws of this state shall be construed to prevent the adopting parent or parents, the birth relatives, including the birth parent or parents, and the child from voluntarily entering into a written agreement to permit continuing contact between the birth relatives, including the birth parent or parents, and the child if the agreement is found by the court to have been entered into voluntarily and to be in the best interests of the child at the time the adoption petition is granted.

(2) Except as provided in paragraph (3), the terms of any postadoption contact agreement executed under this section shall be limited to, but need not include, all of the following:

(A) Provisions for visitation between the child and a birth parent or parents and other birth relatives, including siblings, and the child's Indian tribe if the case is governed by the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

(B) Provisions for future contact between a birth parent or parents or other birth relatives, including siblings, or both, and the child or an adoptive parent, or both, and in cases governed by the Indian Child Welfare Act, the child's Indian tribe.

(C) Provisions for the sharing of information about the child in the future.

(3) The terms of any postadoption contact agreement shall be limited to the sharing of information about the child, unless the child has an existing relationship with the birth relative.

(c) At the time an adoption decree is entered pursuant to a petition filed pursuant to Section 8714, 8714.5, 8802, 8912, or 9000, the court entering the decree may grant postadoption privileges if an agreement for those privileges has been entered into, including agreements entered into pursuant to subdivision (f) of Section 8620.

(d) The child who is the subject of the adoption petition shall be considered a party to the postadoption contact agreement. The written consent to the terms and conditions of the postadoption contact agreement and any subsequent modifications of the agreement by a child who is 12 years of age or older is a necessary condition to the granting of privileges regarding visitation, contact, or sharing of information about the child, unless the court finds by a preponderance of the evidence that the agreement, as written, is in the best interests of the child. Any child who has been found to come within Section 300 of the Welfare and Institutions Code or who is the subject of a petition for jurisdiction of the juvenile court under Section 300 of the Welfare and Institutions Code shall be represented by an attorney for purposes of consent to the postadoption contact agreement.

(e) A postadoption contact agreement shall contain the following warnings in bold type:

(1) After the adoption petition has been granted by the court, the adoption cannot be set aside due to the failure of an adopting parent, a birth parent, a birth relative, or the child to follow the terms of this agreement or a later change to this agreement.

(2) A disagreement between the parties or litigation brought to enforce or modify the agreement shall not affect the validity of the adoption and shall not serve as a basis for orders affecting the custody of the child.

(3) A court will not act on a petition to change or enforce this agreement unless the petitioner has participated, or attempted to

participate, in good faith in mediation or other appropriate dispute resolution proceedings to resolve the dispute.

(f) Upon the granting of the adoption petition and the issuing of the order of adoption of a child who is a dependent of the juvenile court, juvenile court dependency jurisdiction shall be terminated. Enforcement of the postadoption contact agreement shall be under the continuing jurisdiction of the court granting the petition of adoption. The court may not order compliance with the agreement absent a finding that the party seeking the enforcement participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings regarding the conflict, prior to the filing of the enforcement action, and that the enforcement is in the best interests of the child. Documentary evidence or offers of proof may serve as the basis for the court's decision regarding enforcement. No testimony or evidentiary hearing shall be required. The court shall not order further investigation or evaluation by any public or private agency or individual absent a finding by clear and convincing evidence that the best interests of the child may be protected or advanced only by that inquiry and that the inquiry will not disturb the stability of the child's home to the detriment of the child.

(g) The court may not award monetary damages as a result of the filing of the civil action pursuant to subdivision (e) of this section.

(h) A postadoption contact agreement may be modified or terminated only if either of the following occurs:

(1) All parties, including the child if the child is 12 years of age or older at the time of the requested termination or modification, have signed a modified postadoption contact agreement and the agreement is filed with the court that granted the petition of adoption.

(2) The court finds all of the following:

(A) The termination or modification is necessary to serve the best interests of the child.

(B) There has been a substantial change of circumstances since the original agreement was executed and approved by the court.

(C) The party seeking the termination or modification has participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings prior to seeking court approval of the proposed termination or modification.

Documentary evidence or offers of proof may serve as the basis for the court's decision. No testimony or evidentiary hearing shall be required. The court shall not order further investigation or evaluation by any public or private agency or individual absent a finding by clear and convincing evidence that the best interests of the child may be protected or advanced only by that inquiry and that the inquiry will not disturb the stability of the child's home to the detriment of the child.

(i) All costs and fees of mediation or other appropriate dispute resolution proceedings shall be borne by each party, excluding the child. All costs and fees of litigation shall be borne by the party filing the action to modify or enforce the agreement when no party has been found by the court as failing to comply with an existing postadoption contact agreement. Otherwise, a party, other than the child, found by the court as failing to comply without good cause with an existing agreement shall bear all the costs and fees of litigation.

(j) The Judicial Council shall adopt rules of court and forms for motions to enforce, terminate, or modify postadoption contact agreements.

(k) The court may not set aside a decree of adoption, rescind a relinquishment, or modify an order to terminate parental rights or any other prior court order because of the failure of a birth parent, adoptive parent, birth relative, or the child to comply with any or all of the original terms of, or subsequent modifications to, the postadoption contact agreement.

SEC. 5. Section 8802 of the Family Code is amended to read:

8802. (a) (1) Any of the following persons who desire to adopt a child may, for that purpose, file a petition in the county in which the petitioner resides or, if the petitioner is not a resident of this state, in the county in which the placing birth parent or birth parents resided when the adoption placement agreement was signed, or the county in which the placing birth parent or birth parents resided when the petition was filed:

(A) An adult who is related to the child or the child's half sibling by blood or affinity, including all relatives whose status is preceded by the words "step," "great," "great-great," or "grand," or the spouse of any of these persons, even if the marriage was terminated by death or dissolution.

(B) A person named in the will of a deceased parent as an intended adoptive parent where the child has no other parent.

(C) A person with whom a child has been placed for adoption.

(D) (i) A legal guardian who has been the child's legal guardian for more than one year.

(ii) If the court has found the child to have been abandoned pursuant to Section 7822, a legal guardian who has been the child's legal guardian for more than six months. The legal guardian may file a petition pursuant to Section 7822 in the same court and concurrently with a petition under this section.

(iii) However, if the parent nominated the guardian for a purpose other than adoption for a specified time period, or if the guardianship was established pursuant to Section 360 of the Welfare and Institutions Code,

the guardianship shall have been in existence for not less than three years.

(2) If the child has been placed for adoption, a copy of the adoptive placement agreement shall be attached to the petition. The court clerk shall immediately notify the department at Sacramento in writing of the pendency of the proceeding and of any subsequent action taken.

(3) If the petitioner has entered into a postadoption contact agreement with the birth parent as set forth in Section 8616.5, the agreement, signed by the participating parties, shall be attached to and filed with the petition for adoption.

(b) The petition shall contain an allegation that the petitioners will file promptly with the department or delegated county adoption agency information required by the department in the investigation of the proposed adoption. The omission of the allegation from a petition does not affect the jurisdiction of the court to proceed or the validity of an adoption order or other order based on the petition.

(c) The caption of the adoption petition shall contain the names of the petitioners, but not the child's name. The petition shall state the child's sex and date of birth and the name the child had before adoption.

(d) If the child is the subject of a guardianship petition, the adoption petition shall so state and shall include the caption and docket number or have attached a copy of the letters of the guardianship or temporary guardianship. The petitioners shall notify the court of any petition for guardianship or temporary guardianship filed after the adoption petition. The guardianship proceeding shall be consolidated with the adoption proceeding.

(e) The order of adoption shall contain the child's adopted name, but not the name the child had before adoption.

SEC. 6. Section 8912 of the Family Code is amended to read:

8912. (a) A person desiring to adopt a child may for that purpose file a petition in the county in which the petitioner resides. The court clerk shall immediately notify the department at Sacramento in writing of the pendency of the proceeding and of any subsequent action taken.

(b) The caption of the adoption petition shall contain the names of the petitioners, but not the child's name. The petition shall state the child's sex and date of birth. The name the child had before adoption shall appear in the joinder signed by the licensed adoption agency.

(c) If the child is the subject of a guardianship petition, the adoption petition shall so state and shall include the caption and docket number or have attached a copy of the letters of the guardianship or temporary guardianship. The petitioners shall notify the court of any petition for guardianship or temporary guardianship filed after the adoption petition. The guardianship proceeding shall be consolidated with the adoption proceeding.

(d) The order of adoption shall contain the child's adopted name, but not the name the child had before adoption.

(e) If the petitioner has entered into a postadoption contact agreement with the birth parent as set forth in Section 8616.5, the agreement, signed by the participating parties, shall be attached to and filed with the petition for adoption.

SEC. 7. Section 9000 of the Family Code is amended to read:

9000. (a) A stepparent desiring to adopt a child of the stepparent's spouse may for that purpose file a petition in the county in which the petitioner resides.

(b) A domestic partner, as defined in Section 297, desiring to adopt a child of his or her domestic partner may for that purpose file a petition in the county in which the petitioner resides.

(c) The caption of the adoption petition shall contain the names of the petitioners, but not the child's name. The petition shall state the child's sex and date of birth and the name the child had before adoption.

(d) If the child is the subject of a guardianship petition, the adoption petition shall so state and shall include the caption and docket number or have attached a copy of the letters of the guardianship or temporary guardianship. The petitioners shall notify the court of any petition for guardianship or temporary guardianship filed after the adoption petition. The guardianship proceeding shall be consolidated with the adoption proceeding.

(e) The order of adoption shall contain the child's adopted name, but not the name the child had before adoption.

(f) If the petitioner has entered into a postadoption contact agreement with the birth parent as set forth in Section 8616.5, the agreement, signed by the participating parties, shall be attached to and filed with the petition for adoption.

(g) For the purposes of this chapter, stepparent adoption includes adoption by a domestic partner, as defined in Section 297.

SEC. 8. Section 293 of the Welfare and Institutions Code is amended to read:

293. The social worker or probation officer shall give notice of the review hearings held pursuant to Section 366.21 or 366.22 in the following manner:

(a) Notice of the hearing shall be given to the following persons:

(1) The mother.

(2) The presumed father or any father receiving services.

(3) The legal guardian or guardians.

(4) The child, if the child is 10 years of age or older.

(5) Any known sibling of the child who is the subject of the hearing if that sibling either is the subject of a dependency proceeding or has been adjudged to be a dependent child of the juvenile court. If the sibling

is 10 years of age or older, the sibling, the sibling's caregiver, and the sibling's attorney. If the sibling is under 10 years of age, the sibling's caregiver and the sibling's attorney. However, notice is not required to be given to any sibling whose matter is calendared in the same court on the same day.

(6) In the case of a child removed from the physical custody of his or her parent or legal guardian, the foster parents, relative caregivers, community care facility, or foster family agency having custody of the child. In a case in which a foster family agency is notified of the hearing pursuant to this section, and the child resides in a foster home certified by the foster family agency, the foster family agency shall provide timely notice of the hearing to the child's caregivers.

(7) Each attorney of record if that attorney was not present at the time that the hearing was set by the court.

(8) If the court knows or has reason to know that an Indian child is involved, then to the Indian custodian and the tribe of that child. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the Bureau of Indian Affairs.

(b) No notice is required for a parent whose parental rights have been terminated.

(c) The notice of hearing shall be served not earlier than 30 days, nor later than 15 days, before the hearing. In the case of an Indian child, if notice is given to the Bureau of Indian Affairs, the bureau shall have 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. This subdivision does not affect the tribe's right to intervene at any point in the proceedings.

(d) (1) The notice shall contain a statement regarding the nature of the hearing to be held and any change in the custody or status of the child being recommended by the supervising agency. If the notice is to the child, parent or parents, or legal guardian or guardians, the notice shall also advise them of the right to be present, the right to be represented by counsel, the right to request counsel, and the right to present evidence. The notice shall also state that if the parent or parents or legal guardian or guardians fail to appear, the court may proceed without them.

(2) In the case of an Indian child, the notice shall contain a statement that the parent or Indian custodian and the tribe have a right to intervene at any point in the proceedings. The notice shall also include a statement that the parent or Indian custodian and the tribe shall, upon request, be granted up to 20 additional days to prepare for the proceedings.

(e) (1) Service of the notice shall be by first-class mail addressed to the last known address of the person to be noticed or by personal service on the person. Service of a copy of the notice shall be by personal service or by certified mail, return receipt requested, or any other form of notice that is equivalent to service by first-class mail.

(2) In the case of an Indian child, notice shall be by registered mail, return receipt requested.

(f) Notice to a foster parent, a relative caregiver, a certified foster parent who has been approved for adoption, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, shall indicate that the person notified may attend all hearings or may submit any information he or she deems relevant to the court in writing.

SEC. 9. Section 18965 of the Welfare and Institutions Code, as amended and renumbered by Chapter 1122 of the Statutes of 1992, is amended and renumbered to read:

18964. (a) Notwithstanding any provision of law governing the disclosure of information and records, including, but not limited to, Section 5328 of the Welfare and Institutions Code, a person who is trained and qualified to serve on a multidisciplinary personnel team pursuant to subdivision (d) of Section 18951, whether or not the person is serving on a team, may be deemed, by the team, to be part of the team as necessary for the purpose of the prevention, identification, management, or treatment of an abused child and his or her parents. The designated team may deem a person to be a member of the team for a particular case, and that team shall specify its reasons, in writing, for deeming that person to be a member of the team. The person, when deemed a member of the team, may receive and disclose information relevant to a particular case as though he or she were a member of the team. The information and records which may be disclosed shall not be restricted to those obtained in the course of providing services pursuant to this chapter.

(b) The caregiver of the child and, in the case of an Indian child, the child's tribe shall be permitted to provide information about the child to the multidisciplinary personnel team that will be considered by the team and to attend meetings of the multidisciplinary personnel team, as deemed appropriate by the team, without becoming a member of the team. Any caregiver or tribal representative who attends multidisciplinary personnel team meetings shall agree in writing not to disclose any confidential information he or she receives as a result of his or her participation with the team.

CHAPTER 859

An act to amend Section 110423.2 of the Health and Safety Code, relating to dietary supplements.

[Approved by Governor September 29, 2004. Filed with
Secretary of State September 29, 2004.]

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

SECTION 1. Section 110423.2 of the Health and Safety Code is amended to read:

110423.2. (a) It is a misdemeanor for any manufacturer, wholesaler, retailer, or other person, to sell, transfer, or otherwise furnish any of the following to a person under 18 years of age:

(1) A dietary supplement containing an ephedrine group alkaloid.

(2) A dietary supplement containing any of the following:

(A) Androstanediol.

(B) Androstanedione.

(C) Androstenedione.

(D) Norandrostenediol.

(E) Norandrostenedione.

(F) Dehydroepiandrosterone.

(b) A seller shall request valid identification from any individual who attempts to purchase a dietary supplement set forth in subdivision (a) if that individual reasonably appears to the seller to be under 18 years of age.

(c) Notwithstanding subdivisions (a) and (b), a retail clerk who fails to request identification pursuant to subdivision (b) shall not be guilty of a misdemeanor pursuant to subdivision (a), subject to any civil penalties, or subject to any disciplinary action or discharge by his or her employer. This subdivision shall not apply to a retail clerk who is a willful participant in an ongoing criminal conspiracy to violate this article.

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 860

An act to amend Section 226 of the Labor Code, relating to employee compensation.

[Approved by Governor September 29, 2004. Filed with
Secretary of State September 29, 2004.]

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

SECTION 1. Section 226 of the Labor Code is amended to read:

226. (a) Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an existing employee identification number other than a social security number may be shown on the check, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

(b) An employer that is required by this code or any regulation adopted pursuant to this code to keep the information required by subdivision (a) shall afford current and former employees the right to inspect or copy the records pertaining to that current or former employee, upon reasonable request to the employer. The employer may take reasonable steps to assure the identity of a current or former employee. If the employer provides copies of the records, the actual cost of reproduction may be charged to the current or former employee.

(c) An employer who receives a written or oral request to inspect or copy records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of

this subdivision is an infraction. Impossibility of performance, not caused by or a result of a violation of law, shall be an affirmative defense for an employer in any action alleging a violation of this subdivision. An employer may designate the person to whom a request under this subdivision will be made.

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

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

(f) A failure by an employer to permit a current or former employee to inspect or copy records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven hundred fifty dollar ($750) penalty from the employer.

(g) An employee may also bring an action for injunctive relief to ensure compliance with this section, and is entitled to an award of costs and reasonable attorney's fees.

(h) This section does not apply to the state, to any city, county, city and county, district, or to any other governmental entity, except that if the state or a city, county, city and county, district, or other governmental entity furnishes its employees with a check, draft, or voucher paying the employee's wages, the state or a city, county, city and county, district, or other governmental entity shall, by January 1, 2008, use no more than the last four digits of the employee's social security number or shall use an existing employee identification number other than the social security number on that check, draft, or voucher.

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 861

An act to add Title 1.81.25 (commencing with Section 1798.91) to Part 4 of Division 3 of the Civil Code, relating to privacy.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 2004.]

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

SECTION 1. Title 1.81.25 (commencing with Section 1798.91) is added to Part 4 of Division 3 of the Civil Code, to read:

TITLE 1.81.25. CONSUMER PRIVACY PROTECTION

1798.91. (a) For purposes of this title, the following definitions shall apply:

(1) ''Direct marketing purposes'' means the use of personal information for marketing or advertising products, goods, or services directly to individuals. ''Direct marketing purposes'' does not include the use of personal information (A) by bona fide tax exempt charitable or religious organizations to solicit charitable contributions or (B) to raise funds from and communicate with individuals regarding politics and government.

(2) ''Medical information'' means any individually identifiable information, in electronic or physical form, regarding the individual's medical history, or medical treatment or diagnosis by a health care professional. ''Individually identifiable'' means that the medical information includes or contains any element of personal identifying information sufficient to allow identification of the individual, such as the individual's name, address, electronic mail address, telephone number, or social security number, or other information that, alone or in combination with other publicly available information, reveals the individual's identity. For purposes of this section, ''medical information'' does not mean a subscription to, purchase of, or request for a periodical, book, pamphlet, video, audio, or other multimedia product or nonprofit association information.

(3) ''Clear and conspicuous'' means in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding

text of the same size, or set off from the surrounding text of the same size by symbols or other marks that call attention to the language.

(4) For purposes of this section, the collection of medical information online constitutes ''in writing.'' For purposes of this section, ''written consent'' includes consent obtained online.

(b) A business may not orally request medical information directly from an individual regardless of whether the information pertains to the individual or not, and use, share, or otherwise disclose that information for direct marketing purposes, without doing both of the following prior to obtaining that information:

(1) Orally disclosing to the individual in the same conversation during which the business seeks to obtain the information, that it is obtaining the information to market or advertise products, goods, or services to the individual.

(2) Obtaining the consent of either the individual to whom the information pertains or a person legally authorized to consent for the individual, to permit his or her medical information to be used or shared to market or advertise products, goods, or services to the individual, and making and maintaining for two years after the date of the conversation, an audio recording of the entire conversation.

(c) A business may not request in writing medical information directly from an individual regardless of whether the information pertains to the individual or not, and use, share, or otherwise disclose that information for direct marketing purposes, without doing both of the following prior to obtaining that information:

(1) Disclosing in a clear and conspicuous manner that it is obtaining the information to market or advertise products, goods, or services to the individual.

(2) Obtaining the written consent of either the individual to whom the information pertains or a person legally authorized to consent for the individual, to permit his or her medical information to be used or shared to market or advertise products, goods, or services to the individual.

(d) This section does not apply to a provider of health care, health care service plan, or contractor, as defined in Section 56.05.

(e) This section shall not apply to an insurance institution, agent, or support organization, as defined in Section 791.02 of the Insurance Code, when engaged in an insurance transaction, as defined in subdivision (m) of Section 791.02 of the Insurance Code, pursuant to all the requirements of Article 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of Division 1 of the Insurance Code, and the regulations promulgated thereunder.

(f) This section does not apply to a telephone corporation, as defined in Section 234 of the Public Utilities Code, when that corporation is engaged in providing telephone services and products pursuant to

Sections 2881, 2881.1, and 2881.2 of the Public Utilities Code, if the corporation does not share or disclose medical information obtained as a consequence of complying with those sections of the Public Utilities Code, to third parties for direct marketing purposes.

CHAPTER 862

An act to amend Sections 11750, 11751.4, 11754, 11755, 11755.2, 11756, 11757.51, 11757.57, 11757.59, 11757.61, 11758.12, 11758.13, 11758.20, 11758.23, 11758.25, 11758.29, 11758.40, 11758.43, 11758.46, 11759.1, 11759.2, 11759.4, 11760, 11760.1, 11760.2, 11760.3, 11760.4, 11772, 11776, 11778.9, 11781, 11781.5, 11785, 11786, 11795. 11796, 11796.1, 11797, 11798, 11798.1, 11800, 11801, 11802, 11805, 11810, 11811, 11811.1, 11811.3, 11811.5, 11811.6, 11811.7, 11812, 11812.6, 11813, 11814, 11817.1, 11817.3, 11817.4, 11818, 11818.5, 11820, 11820.1, 11825, 11826, 11827, 11828, 11830.5, 11831.5, 11835, 11836, 11837.2, 11837.3, 11837.4, 11837.6, 11837.7, 11837.8, 11837.9, 11838.1, 11840, 11840.1, 11841, and 11860 of, to amend the heading of Article 1 (commencing with Section 11760) of Chapter 1 of Part 2 of Division 10.5 of, to amend the heading of Article 4 (commencing with Section 11810) of Chapter 4 of Part 2 of Division 10.5 of, to amend the heading of Chapter 3 (commencing with Section 11758.10) of Part 1 of Division 10.5 of, to amend the heading of Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of, to amend the heading of Chapter 2 (commencing with Section 11960) of Part 3 of Division 10.5 of, to amend the headings of Part 2 (commencing with Section 11760) and Part 3 (commencing with Section 11860) of Division 10.5 of, to amend and renumber Sections 11830 and 11831 of, to amend and renumber the headings of Article 4 (commencing with Section 11970.1) and Article 5 (commencing with Section 11970.45) of Chapter 2 of Part 3 of Division 10.5 of, to amend and renumber the heading of Chapter 10 (commencing with Section 11840) of Part 2 of Division 10.5 of, to add Sections 11752.1 and 11839.20 to, to add Article 2 (commencing with Section 11760.5) to Chapter 1 of Part 2 of Division 10.5 of, to add Chapter 3.5 (commencing with Section 11788), Chapter 10 (commencing with Section 11839), Chapter 12 (commencing with Section 11842), and Chapter 13 (commencing with Section 11847) to Part 2 of Division 10.5 of, to repeal Sections 11755.4, 11755.5, 11756.5, 11757, 11757.55, 11757.62, 11757.63, 11757.65, 11757.66, 11758.27, 11758.33, 11758.41, 11759.5, 11765, 11782, 11814.5, and 11864 of, to repeal Article 2 (commencing with Section 11865) and Article 4 (commencing with Section 11885) of Chapter 1 of Part 3 of Division

10.5 of, to repeal Article 1 (commencing with Section 11960) and Article 2 (commencing with Section 11965) of Chapter 2 of Part 3 of Division 10.5, to repeal the heading of Chapter 3.3 (commencing with Section 11758.20) of Part 1 of Division 10.5 of, to repeal Chapter 3.5 (commencing with Section 11758.50) of Part 1 of Division 10.5 of, to repeal Chapter 5 (commencing with Section 11759.10) of Part 1 of Division 10.5 of, to repeal Chapter 3 (commencing with Section 11970.5) and Chapter 4 (commencing with Section 11980) of Part 3 of Division 10.5 of, and to repeal and add Sections 11758.10 and 11817.8 of, and to repeal and add Article 3 (commencing with Section 11875) of, the Health and Safety Code, relating to alcohol and other drug programs.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 2004.]

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

SECTION 1. Section 11750 of the Health and Safety Code is amended to read:

11750. There is in state government in the California Health and Human Services Agency a State Department of Alcohol and Drug Programs.

SEC. 2. Section 11751.4 of the Health and Safety Code is amended to read:

11751.4. It is the intent of the Legislature to ensure the integrity of state alcohol and drug programs.

SEC. 3. Section 11752.1 is added to the Health and Safety Code, to read:

11752.1. (a) ''County board of supervisors'' includes county boards of supervisors in the case of counties acting jointly.

(b) ''Agency'' means the California Health and Human Services Agency.

(c) ''Secretary'' means the Secretary of the California Health and Human Services Agency.

(d) ''County plan for alcohol and other drug services'' or ''county plan'' means the county plan, including a budget, adopted by the board of supervisors pursuant to Chapter 4 (commencing with Section 11795).

(e) ''Advisory board'' means the county advisory board on alcohol and other drug problems established at the sole discretion of the county board of supervisors pursuant to Section 11805. If a county does not establish an advisory board, then any provision of this chapter relative to the activities, duties, and functions of the advisory board shall be inapplicable to that county.

(f) ''Alcohol and drug program administrator'' means the county program administrator designated pursuant to Section 11800.

(g) ''State alcohol and other drug program'' includes all state alcohol and other drug projects administered by the department and all county alcohol and other drug programs funded under this division.

(h) ''Health systems agency'' means the health planning agency established pursuant to federal legislation cited as Public Law 93-641.

(i) ''Alcohol and other drug problems'' means problems of individuals, families, and the community that are related to the abuse of alcohol and other drugs.

(j) ''Alcohol abuser'' means anyone who has a problem related to the consumption of alcoholic beverages whether or not it is of a periodic or continuing nature. This definition includes, but is not limited to, persons referred to as ''alcoholics'' and ''drinking drivers.'' These problems may be evidenced by substantial impairment to the person's physical, mental, or social well-being, which impairment adversely affects his or her abilities to function in the community.

(k) ''Drug abuser'' means anyone who has a problem related to the consumption of illicit, illegal, legal, or prescription drugs or over-the-counter medications in a manner other than prescribed, whether or not it is of a periodic or continuing nature. This definition includes, but is not limited to, persons referred to as ''drug addicts.'' The drug-consumption related problems of these persons may be evidenced by substantial impairment to the person's physical, mental, or social well-being, which impairment adversely affects his or her abilities to function in the community.

(*l*) ''Alcohol and other drug service'' means any service that is designed to encourage recovery from the abuse of alcohol and other drugs and to alleviate or preclude problems in the individual, his or her family, and the community.

(m) ''Alcohol and other drug abuse program'' means a collection of alcohol and other drug services that are coordinated to achieve the specified objectives of this part.

(n) ''Driving-under-the-influence program,'' ''DUI Program,'' or ''Licensed Program'' means an alcohol and other drug service that has been issued a valid license by the department to provide services pursuant to Chapter 9 (commencing with Section 11836) of Part 2.

(o) ''Clients-participants'' means recipients of alcohol and other drug prevention, treatment, and recovery program services.

(p) ''Substance Abuse and Mental Health Services Administration'' means that agency of the United States Department of Health and Human Services.

SEC. 4. Section 11754 of the Health and Safety Code is amended to read:

11754. (a) The department shall be the single state agency authorized to receive any federal funds payable directly to the state by

the Substance Abuse and Mental Health Services Administration to implement programs that provide services to alleviate the problems related to alcohol and other drug use.

(b) The department may receive other federal funds and expend them pursuant to this division, the Budget Act, or other statutes.

SEC. 5. Section 11755 of the Health and Safety Code is amended to read:

11755. The department shall do all of the following:

(a) Adopt regulations pursuant to Section 11152 of the Government Code.

(b) Employ administrative, technical, and other personnel as may be necessary for the performance of its powers and duties.

(c) Do or perform any of the acts that may be necessary, desirable, or proper to carry out the purpose of this division.

(d) Provide funds to counties for the planning and implementation of local programs to alleviate problems related to alcohol and other drug use.

(e) Review and execute negotiated net amount contracts and Drug Medi-Cal contracts, and approve or disapprove county plans submitted for state and federal funds allocated by the department.

(f) Provide for technical assistance and training to local alcohol and other drug programs to assist in the planning and implementation of quality services. The department may charge a fee to cover the cost of providing technical assistance to these alcohol and other drug programs.

(g) Review research in, and serve as a resource to provide information relating to, alcohol and other drug programs.

(h) In cooperation with the Department of Personnel Administration, encourage training in other state agencies to assist the agencies to recognize employee problems relating to alcohol and other drug use that affects job performance and encourage the employees to seek appropriate services.

(i) Assist and cooperate with the Office of Statewide Health Planning and Development and the California Health Policy and Data Advisory Commission in the drafting and adoption of the state health plan to assure inclusion of appropriate provisions relating to alcohol and other drug problems.

(j) In the same manner and subject to the same conditions as other state agencies, develop and submit annually to the Department of Finance a program budget for the state-funded alcohol and other drug program, which budget shall include expenditures proposed to be made under this division, and may include expenditures proposed to be made by any other state agency relating to alcohol and other drug problems, pursuant to an interagency agreement with the department.

(k) Review and certify alcohol and other drug programs meeting state standards pursuant to Chapter 7 (commencing with Section 11830) and Chapter 13 (commencing with Section 11847) of Part 2.

(*l*) Develop standards for assuring minimal statewide levels of service quality provided by alcohol and other drug programs.

(m) Review and license narcotic treatment programs.

(n) Develop and implement, in partnership with the counties, alcohol and other drug prevention strategies especially designed for youth.

(o) Develop and maintain a centralized alcohol and drug abuse indicator data collection system that shall gather and obtain information on the status of the alcohol and other drug abuse problems in the State of California. This information shall include, but not be limited to, all of the following:

(1) The number and characteristics of persons receiving recovery or treatment services from alcohol and other drug programs providing publicly funded services or services licensed by the department.

(2) The location and types of services offered by these programs.

(3) The number of admissions to hospitals on both an emergency room and inpatient basis for treatment related to alcohol and other drugs.

(4) The number of arrests for alcohol and other drug violations.

(5) The number of Department of the Youth Authority commitments for drug violations.

(6) The number of Department of Corrections commitments for drug violations.

(7) The number or percentage of persons having alcohol or other drug problems as determined by survey information.

(8) The amounts of illicit drugs confiscated by law enforcement in the state.

(9) The statewide alcohol and other drug program distribution and the fiscal impact of alcohol and other drug problems upon the state.

Providers of publicly funded services or services licensed by the department to clients-participants shall report data in a manner, in a format, and under a schedule prescribed by the department.

(p) Issue an annual report that portrays the drugs abused, populations affected, user characteristics, crime-related costs, socioeconomic costs, and other related information deemed necessary in providing a problem profile of alcohol and other drug abuse in the state.

(q) (1) Require any individual, public or private organization, or government agency, receiving federal grant funds, to comply with all federal statutes, regulations, guidelines, and terms and conditions of the grants. The failure of the individual, public or private organization, or government agency, to comply with the statutes, regulations, guidelines, and terms and conditions of grants received may result in the

department's disallowing noncompliant costs, or the suspension or termination of the contract or grant award allocating the grant funds.

(2) Adopt regulations implementing this subdivision 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 the regulations shall be deemed necessary for the preservation of the public peace, health and safety, or general welfare. Subsequent amendments to the adoption of emergency regulations shall be deemed an emergency only if those amendments are adopted in direct response to a change in federal statutes, regulations, guidelines, or the terms and conditions of federal grants. Nothing in this paragraph shall be interpreted as prohibiting the department from adopting subsequent amendments on a nonemergency basis or as emergency regulations in accordance with the standards set forth in Section 11346.1 of the Government Code.

SEC. 6. Section 11755.2 of the Health and Safety Code is amended to read:

11755.2. (a) The department may implement a program for the establishment of group homes for alcohol and other drug abusers as provided for in Section 300x-4a of Title 42 of the United States Code.

(b) The department may establish the Resident-Run Housing Revolving Fund for the purpose of making loans to group resident-run homes in conformance with federal statutes and regulations. Any program for the purpose of making loans to group resident-run homes shall be a part of the Resident-Run Housing Revolving Fund. Any unexpended balances in a current program shall be transferred to the Resident-Run Housing Revolving Fund and be available for expenditure during the following fiscal year. Appropriations for subsequent fiscal years shall be provided in the annual Budget Act. All loan payments received from previous loans shall be deposited in the Resident-Run Housing Revolving Fund, as well as all future collections. The Resident-Run Housing Revolving Fund shall be invested in the Pooled Money Investment Fund. Interest earned shall accrue to the Resident-Run Housing Revolving Fund and may be made available for future group resident-run home loans.

(c) The department may adopt regulations as are necessary to implement this section.

SEC. 7. Section 11755.4 of the Health and Safety Code is repealed.

SEC. 8. Section 11755.5 of the Health and Safety Code is repealed.

SEC. 9. Section 11756 of the Health and Safety Code is amended to read:

11756. The department relative to the statewide alcohol and other drug program, in addition to the duties provided for in Section 11755, shall do all of the following:

(a) Cooperate with other governmental agencies and the private sector in establishing, conducting, and coordinating alcohol and other drug programs and projects pursuant to Chapter 2 (commencing with Section 11775) of Part 2.

(b) Cooperate with other state agencies to encourage appropriate health facilities to recognize, without discrimination, persons with alcohol and other drug problems who also require medical care and to provide them with adequate and appropriate services.

(c) Encourage counties to coordinate alcohol and other drug services, where appropriate, with county health and social service programs, or with regional health programs pursuant to Article 1 (commencing with Section 11820) of Chapter 5 of Part 2.

(d) Encourage the utilization, support, assistance, and dedication of interested persons in the community in order to increase the number of persons with alcohol and other drug problems who voluntarily seek appropriate services to alleviate those problems.

(e) Evaluate or require the evaluation, including the collection of appropriate and necessary information, of alcohol and other drug programs pursuant to Chapter 6 (commencing with Section 11825) of Part 2.

(f) Review and license driving-under-the-influence programs.

(g) Perform all other duties specifically required pursuant to this part.

SEC. 10. Section 11756.5 of the Health and Safety Code is repealed.

SEC. 11. Section 11757 of the Health and Safety Code is repealed.

SEC. 12. Section 11757.51 of the Health and Safety Code is amended to read:

11757.51. The Legislature finds and declares the following:

(a) Many infants affected by alcohol or other drugs require neonatal intensive care because of low birth weight, prematurity, withdrawal symptoms, serious birth defects, and other medical problems. Alcohol or other drug affected infants are increasingly being placed in neonatal intensive care units and this care is very expensive.

(b) Alcohol and other drug affected infants place an expensive burden on the foster care system, regional centers, the public and private health care systems, and the public school system.

(c) The appropriate response to this crisis is prevention, through expanded resources for recovery from alcohol and other drug dependency. The only sure effective means of protecting the health of these infants is to provide the services needed by mothers to address a problem that is addictive, not chosen.

(d) California has women of childbearing age who abuse alcohol or other drugs. Current resources are not adequate to meet the treatment needs of these women. California cannot delay addressing the serious need in this area. California taxpayers and health care consumers

currently bear the enormous financial burden of alcohol and other drug affected infants and those costs can only be contained through expansion of treatment services for women who have an alcohol or other drug dependency and prevention services for women at risk of developing an alcohol or other drug dependency.

(e) Comprehensive prevention and treatment services for both mothers and infants need to be provided in a multidisciplinary, multispecialist, and multiagency fashion, necessitating coordination by both state and local governments.

(f) Intervention strategies for women at risk of developing an alcohol or other drug dependency have proven effective and there are currently in operation programs that can be expanded and modified to meet the critical need in this area.

SEC. 13. Section 11757.55 of the Health and Safety Code is repealed.

SEC. 14. Section 11757.57 of the Health and Safety Code is amended to read:

11757.57. (a) The office may provide or contract for training regarding alcohol and other drug dependency to providers of health, social, educational, and support services to women of childbearing age and their children.

(b) The purpose of any training provided pursuant to subdivision (a) may be to facilitate the taking of appropriate and thorough medical and social histories of women of childbearing age in order to identify those in special need of alcohol or other drug treatment services and to identify skills for providing case management services to alcohol and other drug using women and their infants. Additional training topics may be covered, including, but not limited to, how to develop procedures for referring those in need of alcohol and other drug treatment services and how to provide appropriate social and emotional support to, as well as developmental monitoring of, drug affected infants and children and their families.

SEC. 15. Section 11757.59 of the Health and Safety Code is amended to read:

11757.59. (a) Funds distributed under this chapter shall be used by counties to fund residential and nonresidential alcohol and other drug treatment programs for pregnant women, postpartum women, and their children and to fund other support services directed at bringing pregnant and postpartum women into treatment and caring for alcohol and other drug exposed infants. Funds may also be used to provide case management services to alcohol and other drug abusing women and their children and special recruitment, training, and support services for foster care parents of substance exposed infants.

(b) In carrying out its responsibilities under this chapter, the office may include in its guidelines the special needs of pregnant women and postpartum women who are chemically dependent and who are in need of treatment services. These special needs include, but are not limited to, the following:

(1) Provision for medical services, which may include, but not be limited to, the following:

(A) Low-risk and high-risk prenatal care.

(B) Pediatric followup care, including preventive infant health care.

(C) Developmental followup care.

(D) Nutrition counseling.

(E) Methadone.

(F) Testing and counseling relating to AIDS.

(G) Monthly visits with a physician and surgeon who specializes in treating persons with chemical dependencies.

(2) Provision for nonmedical services, which may include, but not be limited to, the following:

(A) Case management.

(B) Individual or group counseling sessions, which occur at least once a week.

(C) Family counseling, including, but not limited to, counseling services for partners and children of the women.

(D) Health education services, including perinatal chemical dependency classes, addressing topics that include, but are not limited to, the effects of drugs on infants, AIDS, addiction in the family, child development, nutrition, self esteem, and responsible decisionmaking.

(E) Parenting classes.

(F) Adequate child care for participating women.

(G) Encouragement of active participation and support by spouses, domestic partners, family members, and friends.

(H) Opportunities for a women-only treatment environment.

(I) Transportation to outpatient treatment programs.

(J) Followup services, which may include, but not be limited to, assistance with transition into housing in a drug-free environment.

(K) Child development services.

(L) Educational and vocational services for women.

(M) Weekly urine testing.

(N) Special recruitment, training, and support services for foster care parents of substance exposed infants.

(O) Outreach which reflects the cultural and ethnic diversity of the population served.

SEC. 16. Section 11757.61 of the Health and Safety Code is amended to read:

11757.61. (a) Any county that receives funds distributed under this chapter may establish a perinatal coordinating council that consists of persons who are experts in the areas of alcohol and other drug treatment, client outreach and intervention with alcohol and other drug abusing women, child welfare services, maternal and child health services, and developmental services, and representatives from other community-based organizations. The county board of supervisors shall select an agency or department of the county to be the lead agency. The coordination efforts provided by the lead agency through the council shall include, but not be limited to, the following:

(1) The identification of the extent of the perinatal alcohol and other drug abuse problem in the county based on existing data.

(2) The development of coordinated responses by county health and social service agencies and departments, which responses shall address the problem of perinatal alcohol and other drug abuse in the county.

(3) The definition of the elements of an integrated alcohol and other drug abuse recovery system for pregnant women, postpartum women, and their children.

(4) The identification of essential support services to be included into the integrated recovery system defined pursuant to paragraph (3).

(5) The promotion of communitywide understanding of the perinatal alcohol and other drug abuse problem in the county and appropriate responses to the problem.

(6) The communication with policymakers at both the state and federal level about prevention and treatment needs for pregnant women, postpartum women, and their children for alcohol and other drug abuse that need to be addressed.

(7) The utilization of services that emphasize coordination of treatment services with other health, child welfare, child development, and education services.

SEC. 17. Section 11757.62 of the Health and Safety Code is repealed.

SEC. 18. Section 11757.63 of the Health and Safety Code is repealed.

SEC. 19. Section 11757.65 of the Health and Safety Code is repealed.

SEC. 20. Section 11757.66 of the Health and Safety Code is repealed.

SEC. 21. The heading of Chapter 3 (commencing with Section 11758.10) of Part 1 of Division 10.5 of the Health and Safety Code is amended to read:

CHAPTER 3. COUNTY PLANS AND NEGOTIATED NET AMOUNT CONTRACTS

SEC. 22. Section 11758.10 of the Health and Safety Code is repealed.

SEC. 23. Section 11758.10 is added to the Health and Safety Code, to read:

11758.10. (a) (1) Within 60 days after notification of the final allocation of each fiscal year pursuant to Section 11814, the board of supervisors of each county that receives funds under this division shall adopt and submit to the department, in accordance with the planning process approved by the county board of supervisors and Section 11798, a county plan.

(2) Within 60 days after notification of the final allocation of each fiscal year pursuant to Section 11814, the board of supervisors of each county requesting to participate shall submit to the department, in accordance with Section 11798, a negotiated net amount contract for alcohol and other drug abuse services.

(b) The approved county plan, or executed negotiated net amount contract, as amended, shall remain in effect to provide the basis for advance payment until the next year's plan is approved or contract amendment is executed. The purpose of these county plans and contracts shall be to provide the basis for reimbursements pursuant to this division and to coordinate services pursuant to Part 2 (commencing with Section 11760) in a manner that avoids fragmentation of services and unnecessary expenditures.

(c) The department, after consultation with county alcohol and drug program administrators, shall develop standardized forms to be used by the counties in the submission of the county plan and negotiated net amount contract. The forms shall include terms and conditions relative to county compliance with applicable laws, regulations, guidelines, and Budget Act requirements.

SEC. 24. Section 11758.12 of the Health and Safety Code is amended to read:

11758.12. (a) A negotiated net amount, for the purposes of this chapter, shall be determined by calculating the total budget for services less the amount of projected revenue. These net amounts for alcohol or other drug services, or both, shall be negotiated for each year of the contract between the participating county and the department and shall be disbursed to participating counties monthly in arrears, upon enactment of the Budget Act. Monthly disbursements to the participating county at the beginning of each fiscal year shall be based on the preliminary allocation of funds issued by the department. The payments shall be based on appropriations made by the Legislature and

monthly payments shall be adjusted to reflect reductions and deletions made by the Legislature. The department shall have the option to either terminate this agreement or amend the contract to reflect the reduced funding. The payments shall continue at the adjusted level until the negotiated contract is amended to reflect the final State Budget for the fiscal year and the final allocation to the counties.

(b) Where the State Department of Health Services adopts regulations for determining reimbursement of county alcohol and other drug program plan services allowable under the Medi-Cal program, those regulations shall be controlling only as to the rates for reimbursement of these services allowable under the Medi-Cal program and rendered to Medi-Cal beneficiaries.

(c) Participating counties shall report to the department any information required by the department in accordance with, but shall not exceed, any statutory restrictions, limitations, or conditions enacted by the Legislature, including the applicable Budget Act, or federal law and regulations.

(d) Absent a finding of fraud, abuse, or failure to achieve contract objectives, no restrictions, other than any contained in an executed negotiated net amount contract, a Drug Medi-Cal contract, and an approved county plan, whichever is applicable, shall be placed upon a county's expenditure or retention of state General Fund funds received pursuant to this chapter, with the exception of state General Fund funds used as a match for Drug Medi-Cal federal financial participation.

(e) Unspent state General Fund moneys identified after a date specified in the contract shall be retained by the county and spent on identifiable drug and alcohol service priorities in accordance with the contract.

SEC. 25. Section 11758.13 of the Health and Safety Code is amended to read:

11758.13. The terms of a negotiated net amount contract shall contain a provision defining and expanding upon dedicated capacity. At a minimum ''dedicated capacity'' shall be defined as a historically calculated service modality and service capacity that is adjusted for the projected expansion or reduction in services that the counties agree to make available to provide alcohol and other drug services to persons otherwise eligible for county services. The department shall base its contract negotiations on the availability of a mutually agreeable dedicated capacity.

SEC. 26. The heading of Chapter 3.3 (commencing with Section 11758.20) of Part 1 of Division 10.5 of the Health and Safety Code is repealed.

SEC. 27. Section 11758.20 of the Health and Safety Code is amended to read:

11758.20. (a) The department shall negotiate net amount contracts with each county that requests to participate, in lieu of county plans, budgets, and reports.

(b) The department shall allocate funds for the purpose of establishing negotiated net amount contracts, Drug Medi-Cal contracts, or both, with each participating county in accordance with Sections 11814 and 11817.3.

SEC. 28. Section 11758.23 of the Health and Safety Code is amended to read:

11758.23. (a) The department and counties shall calculate the negotiated net amount, for the purposes of Section 11758.20, by calculating the total budget for services less the amount of projected revenue. These net amounts for alcohol and other drug services shall be negotiated each fiscal year between the participating counties and the department and shall be disbursed to participating counties on a monthly basis.

(b) No contract shall become final until executed by both the participating county and the department. A contract shall be executed by September 30, and shall cover the fiscal year period from July 1 to June 30, inclusive. In the event the participating county or the department does not execute the contract by September 30, or in the event a contract is timely executed, but the county does not meet the performance requirements of the contract, the county shall be compensated for work performed upon submission by the county of a county plan in accordance with Section 11798.

(c) When a negotiated net amount contract is executed by the department, all participating government funding sources, except for the Medi-Cal program (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code) and federal funds, shall be bound to that amount as the cost of providing alcohol or other drug services, subject to meeting the performance requirements in the contract.

SEC. 29. Section 11758.25 of the Health and Safety Code is amended to read:

11758.25. (a) Performance requirements shall be included within the terms of the negotiated net amount contract and shall include, at a minimum, all of the following:

(1) Provision for an adequate quality and quantity of service.

(2) Provision for access to services by persons residing within the contracting county.

(3) A provision requiring that all funds paid by the state for alcohol and other drug programs shall be used exclusively for the purpose for which the payment was made.

(4) A provision requiring that performance be in compliance with applicable state and federal laws, regulations, and standards.

(b) When a minimum required utilization level is measured to dedicated capacity, ''dedicated capacity'' shall be the available capacity based on historical data and department-approved projected expansion of a service modality identified in the contract.

(c) The terms of the contract shall include a provision that allows the department access to county and subcontractor financial and service records for the purpose of auditing the requirements in the contract and establishing the data necessary for prospective contract negotiations.

(d) The terms of the contract shall include a provision for resolution of disputed audit findings.

SEC. 30. Section 11758.27 of the Health and Safety Code is repealed.

SEC. 31. Section 11758.29 of the Health and Safety Code is amended to read:

11758.29. (a) A county with an executed negotiated net amount contract shall bear the financial risk in providing any alcohol or other drug services to the population described and enumerated in the executed contract within the net amount.

(b) The participating county shall not be precluded from subcontracting to purchase all or part of the delivery of alcohol and other drug services from noncounty providers.

(c) The participating county shall comply with Sections 11840 and 11840.1 to provide matching funds for programs and services.

(d) The participating county shall submit to the department statistical data, as required in the contract, and end-of-year cost data no later than 60 days after the close of the fiscal year.

SEC. 32. Section 11758.33 of the Health and Safety Code is repealed.

SEC. 33. Section 11758.40 of the Health and Safety Code is amended to read:

11758.40. Notwithstanding subdivision (c) of Section 11758.23, the department may enter into a Medi-Cal Drug Treatment Program contract with each county for the provision of services within the county service area.

SEC. 34. Section 11758.41 of the Health and Safety Code is repealed.

SEC. 35. Section 11758.43 of the Health and Safety Code is amended to read:

11758.43. To the extent any county refuses to execute the Medi-Cal Drug Treatment Program contract in accordance with the requirements of federal medicaid and state Medi-Cal laws, and in accordance with the federal court order and any future action in the case of Sobky v. Smoley,

855 F. Supp. 1123 (E. D. Cal.), the department shall contract directly with the certified providers in that county, and retain that portion of that county's state General Fund allocation necessary to meet the cost of providing services to eligible beneficiaries and the costs to the state of administering the Medi-Cal Drug Treatment Program contracts.

SEC. 36. Section 11758.46 of the Health and Safety Code is amended to read:

11758.46. (a) For purposes of this section, ''Drug Medi-Cal services'' means all of the following services, administered by the department, and to the extent consistent with state and federal law:

(1) Narcotic treatment program services, as set forth in Section 11758.42.

(2) Day care rehabilitative services.

(3) Perinatal residential services for pregnant women and women in the postpartum period.

(4) Naltrexone services.

(5) Outpatient drug-free services.

(b) Upon federal approval of a federal medicaid state plan amendment authorizing federal financial participation in the following services, and subject to appropriation of funds, ''Drug Medi-Cal services'' shall also include the following services, administered by the department, and to the extent consistent with state and federal law:

(1) Notwithstanding subdivision (a) of Section 14132.90 of the Welfare and Institutions Code, day care habilitative services, which, for purposes of this paragraph, are outpatient counseling and rehabilitation services provided to persons with alcohol or other drug abuse diagnoses.

(2) Case management services, including supportive services to assist persons with alcohol or other drug abuse diagnoses in gaining access to medical, social, educational, and other needed services.

(3) Aftercare services.

(c) (1) Annually, the department shall publish procedures for contracting for Drug Medi-Cal services with certified providers and for claiming payments, including procedures and specifications for electronic data submission for services rendered.

(2) The department, county alcohol and drug program administrators, and alcohol and drug service providers shall automate the claiming process and the process for the submission of specific data required in connection with reimbursement for Drug Medi-Cal services, except that this requirement applies only if funding is available from sources other than those made available for treatment or other services.

(d) A county or a contractor for the provision of Drug Medi-Cal services shall notify the department, within 30 days of the receipt of the county allocation, of its intent to contract, as a component of the single state-county contract, and provide certified services pursuant to Section

11758.42, for the proposed budget year. The notification shall include an accurate and complete budget proposal, the structure of which shall be mutually agreed to by county alcohol and drug program administrators and the department, in the format provided by the department, for specific services, for a specific time period, and including estimated units of service, estimated rate per unit consistent with law and regulations, and total estimated cost for appropriate services.

(e) (1) Within 30 days of receipt of the proposal described in subdivision (d), the department shall provide, to counties and contractors proposing to provide Drug Medi-Cal services in the proposed budget year, a proposed multiple-year contract, as a component of the single state-county contract, for these services, a current utilization control plan, and appropriate administrative procedures.

(2) A county contracting for alcohol and drug services shall receive a single state-county contract for the net negotiated amount and Drug Medi-Cal services.

(3) Contractors contracting for Drug Medi-Cal services shall receive a Drug Medi-Cal contract.

(f) (1) Upon receipt of a contract proposal pursuant to subdivision (d), a county and a contractor seeking to provide reimbursable Drug Medi-Cal services and the department may begin negotiations and the process for contract approval.

(2) If a county does not approve a contract by July 1 of the appropriate fiscal year, in accordance with subdivisions (c) to (e), inclusive, the county shall have 30 additional days in which to approve a contract. If the county has not approved the contract by the end of that 30-day period, the department shall contract directly for services within 30 days.

(3) Counties shall negotiate contracts only with providers certified to provide reimbursable Drug Medi-Cal services and that elect to participate in this program. Upon contract approval by the department, a county shall establish approved contracts with certified providers within 30 days following enactment of the annual Budget Act. A county may establish contract provisions to ensure interim funding pending the execution of final contracts, multiple-year contracts pending final annual approval by the department, and, to the extent allowable under the annual Budget Act, other procedures to ensure timely payment for services.

(g) (1) For counties and contractors providing Drug Medi-Cal services, pursuant to approved contracts, and that have accurate and complete claims, reimbursement for services from state General Fund moneys shall commence no later than 45 days following the enactment of the annual Budget Act for the appropriate state fiscal year.

(2) For counties and contractors providing Drug Medi-Cal services, pursuant to approved contracts, and that have accurate and complete claims, reimbursement for services from federal medicaid funds shall commence no later than 45 days following the enactment of the annual Budget Act for the appropriate state fiscal year.

(3) The State Department of Health Services and the department shall develop methods to ensure timely payment of Drug Medi-Cal claims.

(4) The State Department of Health Services, in cooperation with the department, shall take steps necessary to streamline the billing system for reimbursable Drug Medi-Cal services, to assist the department in meeting the billing provisions set forth in this subdivision.

(h) The department shall submit a proposed interagency agreement to the State Department of Health Services by May 1 for the following fiscal year. Review and interim approval of all contractual and programmatic requirements, except final fiscal estimates, shall be completed by the State Department of Health Services by July 1. The interagency agreement shall not take effect until the annual Budget Act is enacted and fiscal estimates are approved by the State Department of Health Services. Final approval shall be completed within 45 days of enactment of the Budget Act.

(i) (1) A county or a provider certified to provide reimbursable Drug Medi-Cal services, that is contracting with the department, shall estimate the cost of those services by April 1 of the fiscal year covered by the contract, and shall amend current contracts, as necessary, by the following July 1.

(2) A county or a provider, except for a provider to whom subdivision (j) applies, shall submit accurate and complete cost reports for the previous state fiscal year by November 1, following the end of the state fiscal year. The department may settle cost for Drug Medi-Cal services, based on the cost report as the final amendment to the approved single state-county contract.

(j) Certified narcotic treatment program providers, that are exclusively billing the state or the county for services rendered to persons subject to Section 1210.1 of the Penal Code, Section 3063.1 of the Penal Code, or Section 11758.42 shall submit accurate and complete performance reports for the previous state fiscal year by November 1 following the end of that state fiscal year. A provider to which this subdivision applies shall estimate its budgets using the uniform state monthly reimbursement rate. The format and content of the performance reports shall be mutually agreed to by the department, the County Alcohol and Drug Program Administrators Association of California, and representatives of the treatment providers.

SEC. 37. Chapter 3.5 (commencing with Section 11758.50) of Part 1 of Division 10.5 of the Health and Safety Code is repealed.

SEC. 38. Section 11759.1 of the Health and Safety Code is amended to read:

11759.1. The department, in collaboration with counties and providers of alcohol and other drug services, shall establish community-based nonresidential and residential recovery programs to intervene and treat the problems of alcohol and other drug use among youth.

SEC. 39. Section 11759.2 of the Health and Safety Code is amended to read:

11759.2. The department, in collaboration with counties and providers of alcohol and other drug services, shall establish criteria for participation, programmatic requirements, and terms and conditions for funding. These criteria shall include, but not be limited to, local match requirements of 10 percent, either in-kind or in cash. The criteria shall also include consideration of indicators of alcohol and other drug use among youth so that funds are targeted to localities with the highest need.

SEC. 40. Section 11759.4 of the Health and Safety Code is amended to read:

11759.4. Not later than January 1 of each year, the department, in collaboration with the counties and providers of alcohol and other drug services, shall report to the Legislature during budget hearings regarding the status of the implementation of this chapter.

SEC. 41. Section 11759.5 of the Health and Safety Code is repealed.

SEC. 42. Chapter 5 (commencing with Section 11759.10) of Part 1 of Division 10.5 of the Health and Safety Code is repealed.

SEC. 43. The heading of Part 2 (commencing with Section 11760) of Division 10.5 of the Health and Safety Code is amended to read:

PART 2. STATE GOVERNMENT'S ROLE TO ALLEVIATE PROBLEMS RELATED TO THE INAPPROPRIATE USE OF ALCOHOLIC BEVERAGES AND OTHER DRUG USE

SEC. 44. The heading of Article 1 (commencing with Section 11760) of Chapter 1 of Part 2 of Division 10.5 of the Health and Safety Code is amended to read:

Article 1. Statement of Problems Related to the Inappropriate Use of Alcoholic Beverages and Other Drug Use and the Reasons for and Limitations on State Government's Role

SEC. 45. Section 11760 of the Health and Safety Code is amended to read:

11760. The Legislature finds and declares that problems related to the inappropriate use of alcoholic beverages and other drug use

adversely affect the general welfare of the people of California. These problems include, but are not limited to, the following:

(a) Substantial fatalities, permanent disability, and property damage resulting from driving under the influence. Crimes involving alcohol and other drug use are a drain on law enforcement, the courts, and the penal system.

(b) Alcoholism in the individual, which is an addiction to the drug alcohol, with its attendant deterioration of physical and emotional health and social well-being.

(c) Alcoholism and other drug use in the family with its attendant deterioration of all relationships and the well-being of family members.

(d) A risk of increased susceptibility to serious illnesses and other major health problems that ultimately create a burden on both public and private health facilities and resources.

(e) A risk of fetal alcohol syndrome.

(f) Losses in production and tax revenues due to absenteeism, unemployment, and industrial accidents.

SEC. 46. Section 11760.1 of the Health and Safety Code is amended to read:

11760.1. The Legislature recognizes that any efforts to address the problems related to inappropriate alcohol use and other drug use are greatly hindered by:

(a) The stigmatization of persons who have alcohol and other drug problems.

(b) Denial by the individual and the community, especially among members of the professional community, sometimes referred to as gatekeepers, regarding the nature and scope of alcohol and other drug problems.

(c) Services that, if uncoordinated, often are conflicting, inappropriate, ineffective, duplicative, and wasteful of limited public and private resources.

(d) Actions and attitudes that encourage consumption of alcoholic beverages in California, which consumption leads to alcohol problems.

(e) Actions and attitudes that encourage illicit drug use.

SEC. 47. Section 11760.2 of the Health and Safety Code is amended to read:

11760.2. The Legislature finds that state government has an affirmative role in alleviating problems related to the inappropriate use of alcoholic beverages and other drug use and that its major objective is protection of the public health and safety, particularly where problems related to inappropriate alcohol use and other drug use are likely to cause harm to individuals, families, and the community.

SEC. 48. Section 11760.3 of the Health and Safety Code is amended to read:

11760.3. The Legislature recognizes that state government's role should be limited for several reasons including, but not restricted to:

(a) State government should intervene in the activities of individuals only where those individuals' inappropriate use of alcoholic beverages and other drug use is likely to cause significant harm to other persons, families, or the community.

(b) The resources available to alleviate problems related to inappropriate alcohol use and other drug use are limited.

(c) Significant private resources, economic incentives, and voluntary actions of individuals and groups in the community are available and should be utilized and encouraged to preclude the necessity for governmental involvement.

SEC. 49. Section 11760.4 of the Health and Safety Code is amended to read:

11760.4. (a) The Legislature finds that, in order to utilize effectively the limited state funds available for programs whose purpose is to alleviate the problems related to inappropriate alcohol use and other drug use and to overcome the barriers to their solution as described in Section 11760.1, the responsibility and authority for the encouragement of the planning for, and the establishment of, county-based programs and statewide alcohol and other drug projects be concentrated primarily in one state department.

(b) The Legislature further recognizes the department's limited role in state government in trying to alleviate the problems related to inappropriate alcohol use and other drug use because of both of the following:

(1) The department's limited budget and staff.

(2) The important role played by other state agencies in trying to alleviate the problems related to inappropriate alcohol use and other drug use.

SEC. 50. Article 2 (commencing with Section 11760.5) is added to Chapter 1 of Part 2 of Division 10.5 of the Health and Safety Code, to read:

Article 2. Coordination of Services

11760.5. (a) The Legislature recognizes that alcohol and other drug abuse should be viewed and treated as a health problem, as well as a law enforcement problem. The alcohol and other drug abuse problem has significant public impact and must, in addition to law enforcement, be given community, education, social, and health attention if prevention and amelioration is to be achieved. These approaches should be coordinated into a multiagency and multifaceted program for alcohol and other drug abuse control in the counties of the state.

(b) It is the intent of the Legislature that community alcohol and other drug abuse services shall be organized in the counties for alcohol and other drug abusers through locally administered and locally controlled community alcohol and other drug abuse programs. The community alcohol and other drug abuse programs shall operate under the principle that services are designed to be equally accessible to all persons, including persons who because of differences in language, cultural differences in language, cultural traditions, or physical disabilities, confront barriers to knowing about or to using the alcohol and other drug abuse services that are offered.

11760.6. It is the intent of the Legislature that the department encourage the development of high quality, cost-effective services. It is further the intent of the Legislature that poor quality, underutilized, duplicative, or marginal services be disapproved by the county.

SEC. 51. Section 11765 of the Health and Safety Code is repealed.

SEC. 52. Section 11772 of the Health and Safety Code is amended to read:

11772. (a) (1) The department may enter into agreements and contracts with any person or public or private agency, corporation, or other legal entity, including contracts to pay these entities in advance or reimburse them for alcohol and other drug services provided to alcohol and other drug abusers and their families and communities.

(2) The department may make grants to public and private entities that are necessary or incidental to the performance of its duties and the execution of its powers. The department may pay these entities in advance or reimburse them for services provided.

(3) The Legislature directs the department to contract with any person or public or private agency, corporation, or other legal entity to perform its duties whenever that expertise is available and appropriate to utilize.

(b) Notwithstanding any other provision of this part, the department may not contract directly for the provision of alcohol and other drug services except as follows:

(1) To provide referral and monitoring services for recipients of Supplemental Security Income in those counties that choose not to provide these services.

(2) For demonstration programs of limited duration and scope, which programs, wherever possible, shall be administered through the counties, and which shall be specifically authorized and funded by the Budget Act or other statutes.

(3) To provide supportive services, such as technical assistance, on a statewide basis, or management and evaluation studies to help assure more effective implementation of this part.

(c) The Legislature strongly encourages all counties to apply for funds under this part because of the seriousness of alcohol and other drug

problems in California and the necessity for affirmative governmental involvement to help alleviate alcohol and other drug problems. However, the Legislature has chosen not to mandate that counties provide those services and programs. In the absence of local community control of the services and programs, the state shall not intervene to operate, directly or through contract, services and programs that the elected county board of supervisors has chosen not to provide to its constituents.

SEC. 54. Section 11776 of the Health and Safety Code is amended to read:

11776. The department shall confer and cooperate with other state agencies whose responsibilities include alleviating the problems related to inappropriate alcohol use and other drug use in order to maximize the state's effectiveness and limited resources in these efforts. These agencies shall include, but are not limited to, the Departments of Alcoholic Beverage Control, Corrections, Industrial Relations, Motor Vehicles, Rehabilitation, and the Youth Authority, the State Departments of Developmental Services, Education, Health Services, Mental Health, and Social Services, the Employment Development Department, and the Office of Traffic Safety.

SEC. 55. Section 11778.9 of the Health and Safety Code is amended to read:

11778.9. It is the intent of the Legislature that the department cooperate closely with individuals and organizations concerned with alleviating problems related to inappropriate alcohol use and other drug use. The Legislature recognizes the wealth of experience and commitment that many individuals and organizations in the community have to offer and that can enhance the effectiveness of the programs funded by the department through counties.

SEC. 56. Section 11781 of the Health and Safety Code is amended to read:

11781. The Legislature finds and declares all of the following:

(a) Federal, state, and local governments have the responsibility and the expressed intent to provide and ensure the accessibility of alcohol and other drug treatment, recovery, intervention, and prevention services to all individuals, with specific emphasis on women, ethnic minorities, and other disenfranchised segments of the population.

(b) The effects of inappropriate alcohol use by ethnic populations in California are increasing. Concurrently, the use of available recovery services by these populations is not in keeping with the increase of problems experienced by these populations.

(c) There is a great shortage of treatment programs available to pregnant women and their offspring. Blacks have an infant mortality rate

twice that of the general population, and substance abuse only exacerbates the problem.

(d) Barriers to accessing the services available specifically include, but are not limited to, the following:

(1) Lack of educational materials appropriate to the community.

(2) Geographic isolation or remoteness.

(3) Institutional and cultural barriers.

(4) Language differences.

(5) Lack of representation by affected groups employed by public and private service providers and policymakers.

(6) Insufficient research information regarding problems and appropriate strategies to resolve the problems of access to services.

(e) While current law requires the department to develop and implement a statewide plan to alleviate problems related to inappropriate alcohol use and other drug use and to overcome the barriers to their solution, these attempts have been ineffective due to the magnitude of the task.

SEC. 57. Section 11781.5 of the Health and Safety Code is amended to read:

11781.5. The department shall provide direction to counties and to public and private organizations serving the target populations to increase access to alcohol and other drug abuse prevention and recovery programs in all of the following ways:

(a) Assume responsibility to increase the knowledge within state agencies and the Legislature of problems affecting the target populations.

(b) Determine, compile, and disseminate information and resource needs of the counties and constituent service providers to better serve the target populations.

(c) Ensure that established state and county standards, policies, and procedures are not discriminatory and do not contribute to service accessibility barriers.

(d) Promote an understanding of ethnic and gender differences, approaches to problems, and strategies for increasing voluntary access to services by the target populations.

(e) Affirmatively coordinate with the counties for the provision of services to the target populations and to assure accountability that necessary services are actually provided.

SEC. 58. Section 11782 of the Health and Safety Code is repealed.

SEC. 59. Section 11785 of the Health and Safety Code is amended to read:

11785. The Legislature recognizes the importance of encouraging research to study the biological aspects of, and the social factors

contributing to, problems related to the inappropriate use of alcoholic beverages and other drug use.

The Legislature further recognizes the value of interpreting and applying research results through changes in public policy.

SEC. 60. Section 11786 of the Health and Safety Code is amended to read:

11786. The department may enter into contracts for special studies and research to develop the information needed for formulating policies that will reduce the incidence of alcohol and other drug use problems through promising and innovative approaches in prevention, intervention, and treatment.

SEC. 61. Chapter 3.5 (commencing with Section 11788) is added to Part 2 of Division 10.5 of the Health and Safety Code, to read:

CHAPTER 3.5. RESOURCES AND INFORMATION

11788. The department, with the approval of the Secretary of the Health and Human Services Agency, may contract with any public or private agency for the performance of any of the functions vested in the department by this chapter. Any department of the state is authorized to enter into such a contract.

11789. (a) The department shall be a central information resource on alcohol and other drug abuse prevention and treatment programs and on research projects with respect to alcohol and other drug abuse.

(b) The department shall collect, and act as an information exchange for, information on research and service projects completed or in progress relating to alcohol and other drug abuse, provide, to any person, institution, or public agency proposing any research or service project on that subject, information with respect to the areas in which research is needed, and evaluate programs of research, treatment, and education with respect to alcohol and other drug abuse.

(c) No state agency shall conduct any research or service project on alcohol and other drug abuse until it has provided the department with a description of its proposed project and until the department has responded with a written description of how the research or service project relates with other completed, concurrently operating, or pending research or service projects. If the department fails to provide the agency with the written description within 60 days from the date of receipt of the proposed project, the state agency may proceed to conduct the research or service project as described in the agency's proposal.

11790. The department, at the request of the county alcohol and drug program administrator, may assist local community organizations in initiating effective programs to prevent and treat alcohol and other drug abuse. The department may charge a fee for this assistance.

11791. The department may develop and implement a mass media alcohol and other drug education program involving newspapers, radio, and television in order to provide community education, develop public awareness, and motivate community action in alcohol and other drug abuse prevention, treatment, and rehabilitation.

11792. (a) The department, in consultation with the State Department of Health Services, shall use existing materials to distribute a brochure on the care and treatment of infants under the age of six months who have been exposed to alcohol and other drugs. The brochure shall include, but not be limited to, the following:

(1) The signs and symptoms of an infant who has been exposed to alcohol and other drugs.

(2) The health problems of infants who have been exposed to alcohol and other drugs.

(3) The special feeding needs of infants who have been exposed to alcohol and other drugs.

(4) The special care needs of infants who have been exposed to alcohol and other drugs, such as not overstimulating those infants who are addicted to cocaine.

(b) The brochure developed pursuant to subdivision (a) may be distributed through hospitals, public health nurses, child protective services, alcohol and other drug facilities, educational networks, foster parent groups, medical professional offices, Medi-Cal programs, and county interagency task force groups, as well as any other agency that the department selects.

11793. The department may develop an objective program evaluation device or methodology and evaluate state-supported alcohol and other drug abuse prevention and treatment programs.

11794. The department shall, in consultation with the State Department of Education, screen and evaluate alcohol and other drug abuse books, pamphlets, literature, movies, and other audiovisual aids and may prepare and disseminate lists of recommended materials to schools, public libraries, alcohol and other drug information centers, and other public and private agencies. The department may charge a fee, not exceeding actual costs, for providing the materials.

11794.1. It is the intent of the Legislature that the department, in collaboration with the State Department of Health Services and stakeholders in the medical and treatment provider communities, work to identify methods for better informing medical doctors of the benefits of diagnosing and treating substance abuse among their patient population, including, but not limited to, improved outreach efforts at the state and local levels and the use of information dissemination strategies, where appropriate.

SEC. 62. Section 11795 of the Health and Safety Code is amended to read:

11795. (a) The board of supervisors of each county may apply to the department for funds for the purpose of alleviating problems in its county related to alcohol abuse and other drug use. This part applies only to counties receiving state or federal funds allocated by the department under this part.

(b) The department shall coordinate state and local alcohol and other drug abuse prevention, care, treatment, and rehabilitation programs. It is the intent of the Legislature that the department and the counties maintain a cooperative partnership to assure effective implementation of this chapter.

(c) The Legislature grants responsibility to the county to administer and coordinate all county alcohol and other drug programs funded under this part. County alcohol and other drug programs shall account to the board of supervisors and to the state for their effective implementation. The county shall establish its own priorities for alcohol and other drug programs funded under this part, except with respect to funds that are allocated to the county for federally required programs and services.

SEC. 63. Section 11796 of the Health and Safety Code is amended to read:

11796. (a) (1) Two or more counties, each with a population of under 200,000, may jointly establish county alcohol and other drug programs pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code.

(2) Subject to the department's approval, any county may, by contract, furnish alcohol and other drug services to another county.

(b) Unless otherwise expressly provided for or required by the context, this part relating to county alcohol and other drug programs shall apply to alcohol and other drug programs operated jointly by two or more counties.

SEC. 64. Section 11796.1 of the Health and Safety Code is amended to read:

11796.1. Except as provided in subdivision (b) of Section 11812, nothing in this part shall prevent any city or combination of cities from financing and administering directly an alcohol or other drug program or providing service by contracting with the county to provide and be reimbursed for services provided pursuant to the county alcohol and other drug program under Article 4 (commencing with Section 11810). In addition, where appropriate, any county may contract with a city, or combination of cities, to administer contracts with privately operated agencies to alleviate problems related to inappropriate alcohol use and other drug use.

SEC. 65. Section 11797 of the Health and Safety Code is amended to read:

11797. (a) Funds allocated to the county pursuant to this part shall be used exclusively for county alcohol and other drug services as identified in the executed negotiated net amount contract, Drug Medi-Cal contract, and the approved county plan, whichever is applicable, and shall be separately identified and accounted for.

(b) Of the funds allocated to each county in accordance with Sections 11817.1, 11817.3, 11818, and 11840, the department shall allocate to each county the amount required by that county to carry out its local alcohol and other drug abuse program in accordance with the executed negotiated net amount contract or Drug Medi-Cal contract, as described in Section 11758.20, and the approved county plan, whichever is applicable.

SEC. 66. Section 11798 of the Health and Safety Code is amended to read:

11798. Counties that receive funds shall prepare and submit a county plan, negotiated net amount contract, and Drug Medi-Cal contract, whichever is applicable, that shall include a budget of all funds allocated to the county by the department pursuant to this part, and shall report utilization of those funds in an annual cost report pursuant to subdivision (q) of Section 11755.

SEC. 67. Section 11798.1 of the Health and Safety Code is amended to read:

11798.1. (a) Counties shall each develop and operate their alcohol and other drug abuse programs that would otherwise be required under this division, as one coordinated program in each county. Counties may combine their alcohol and drug advisory boards, their alcohol and other drug plans, their alcohol and drug budgets, and the submission deadlines for alcohol and other drug budgets and cost reports, and the administration of programs at both the county and provider levels.

(b) A county may, by resolution of its board of supervisors, develop and operate alcohol and other drug abuse programs as one coordinated system. In establishing coordinated systems with combined alcohol and other drug services counties shall do all of the following:

(1) Submit a county plan, including, but not limited to, a budget of all funds allocated to the county by the department.

(2) Report all of the following to the department:

(A) Utilization of all funds allocated by the department to the county in a combined annual expenditure report pursuant to state and federal requirements.

(B) All information necessary for the department to administer this section, including, but not limited to, information needed to meet federal reporting requirements. This information shall be reported on a form

developed by the department in consultation with the County Alcohol and Drug Programs Administrators Association of California.

(3) Combine drug and alcohol administrations in performance of alcohol and other drug program administrative duties pursuant to Section 11801.

(4) Require combined programs, for planning and reimbursement purposes, to assess or categorize program participants at the time of admission and discharge with regard to whether their primary treatment needs are related to abuse of alcohol or of other drugs.

(5) Ensure that combined programs comply with statewide program standards developed pursuant to regulations adopted by the department in consultation with the alcohol and drug administrators.

(c) A county operating a coordinated system under this section shall assess or categorize a program participant at the time of admission and discharge as having problems primarily with abuse of either alcohol or of other drugs for purposes of federal reimbursement as required by federal law and report information to the department in a form consistent with existing data collection systems.

SEC. 68. Section 11800 of the Health and Safety Code is amended to read:

11800. (a) The board of supervisors shall designate a health-related county agency or department that shall administer the county alcohol and other drug program. The board of supervisors or the head of the designated health-related agency or department shall appoint an alcohol and drug program administrator, who shall report to the head of the agency or department through administrative channels designated by the board of supervisors. The county alcohol and other drug program shall be placed at the same administrative level and have responsibility and authority similar to other major health programs in the county.

(b) In accordance with regulations adopted by the department, the alcohol and drug program administrator shall be qualified by his or her ability, training, and experience to administer or coordinate and monitor the county alcohol and other drug program.

SEC. 69. Section 11801 of the Health and Safety Code is amended to read:

11801. The alcohol and drug program administrator, acting through administrative channels designated pursuant to Section 11795, shall do all of the following:

(a) Coordinate and be responsible for the planning process, including preparation of the county plan executing the negotiated net amount contract, and Drug Medi-Cal contract, whichever is applicable.

(b) (1) Recommend to the board of supervisors the provision of services, establishment of facilities, contracting for services or facilities,

and other matters necessary or desirable in accomplishing the purposes of this part.

(2) Exercise general supervision over the alcohol and other drug program services provided under the county plan, negotiated net amount contract, and Drug Medi-Cal contract, whichever is applicable.

(c) Assure compliance with applicable laws relating to discrimination against any person because of race, creed, age, religion, sex, sexual preference, or disabling conditions.

(d) (1) Provide reports and information periodically to the advisory board regarding the status of alcohol and other drug programs in the county and keep the advisory board informed regarding changes in relevant state, federal, and local laws or regulations or improvements in program design and services that may affect the county alcohol and other drug program.

(2) Submit an annual report to the board of supervisors reporting all activities of the alcohol and other drug program, including a financial accounting of expenditures and a forecast of anticipated needs for the upcoming year.

(e) Be directly responsible for the administration of all alcohol or other drug program funds allocated to the county under this part, administration of county operated programs, and coordination and monitoring of programs that have contracts with the county to provide alcohol and other drug services.

(f) Encourage the appropriate utilization of all other public and private alcohol and other drug programs and services in the county in coordination with the programs funded pursuant to this part.

(g) Coordinate the activities of the county alcohol and other drug program with appropriate health planning agencies pursuant to Chapter 5 (commencing with Section 11820).

(h) Assure the evaluation of alcohol and other drug programs, including the collection of appropriate and necessary information, pursuant to Chapter 6 (commencing with Section 11825).

(i) Participate in the process to assure program quality in compliance with appropriate standards pursuant to Chapter 7 (commencing with Section 11830).

(j) Participate in the regulations process pursuant to Chapter 8 (commencing with Section 11835).

(k) Participate and represent the county in meetings of the County Alcohol and Drug Program Administrators Association of California pursuant to Section 11811.5 for the purposes of representing the counties in their relationship with the state with respect to policies, standards, and administration for alcohol and other drug abuse services.

(*l*) Provide for the orientation of the members of the advisory board, including, but not limited to, the provision of information and materials

on alcohol and other drug problems and programs, planning, procedures, and site visits to local programs.

(m) Perform any other acts that may be necessary, desirable, or proper to carry out the purposes of this part.

SEC. 70. Section 11802 of the Health and Safety Code is amended to read:

11802. (a) Money deposited in the county alcohol abuse education and prevention fund pursuant to Section 1463.25 of the Penal Code shall be jointly administered by the administrator of the county's alcohol and other drug program and the county office of education subject to the approval of the board of supervisors and the county office of education. A minimum of 33 percent of the fund shall be allocated to primary prevention programs in the schools and community. Primary prevention programs developed and implemented under this section shall emphasize cooperation in planning and program implementation of alcohol abuse education and prevention among schools and community alcohol and other drug abuse agencies. Coordination shall be demonstrated through an interagency agreement among county offices of education, school districts, and the county alcohol and drug program administrator.

(b) Programs funded, planned, and implemented under this section shall emphasize a joint school-community primary education and prevention program that may include:

(1) School and classroom-oriented programs, including, but not limited to, programs designed to encourage sound decisionmaking, an awareness of values, an awareness of alcohol and its effects, enhanced self-esteem, social and practical skills that will assist students toward maturity, enhanced or improved school climate and relationships among all school personnel and students, and furtherance of cooperative efforts of school- and community-based personnel.

(2) School- or community-based nonclassroom alternative programs, or both, including, but not limited to, positive peer group programs, programs involving youth and adults in constructive activities designed as alternatives to alcohol use, and programs for special target groups, such as women, ethnic minorities, and other high-risk, high-need populations.

(3) Family-oriented programs, including, but not limited to, programs aimed at improving family relationships and involving parents constructively in the education and nurturing of their children, as well as in specific activities aimed at preventing alcohol abuse.

(c) The money deposited under subdivision (a) shall supplement and not supplant any local funds made available to support the county's alcohol abuse education and prevention efforts.

(d) If the county has a drug abuse primary prevention program, it may choose to combine or coordinate its drug and alcohol abuse education and prevention programs.

SEC. 71. Section 11805 of the Health and Safety Code is amended to read:

11805. Each county may have an advisory board on alcohol and other drug problems appointed by the board of supervisors. The advisory board may be independent, be under the jurisdiction of another health-related or human services advisory board established pursuant to any provision of state law, or have the same membership as that other advisory board.

SEC. 72. The heading of Article 4 (commencing with Section 11810) of Chapter 4 of Part 2 of Division 10.5 of the Health and Safety Code is amended to read:

Article 4. County Alcohol and Other Drug Program

SEC. 73. Section 11810 of the Health and Safety Code is amended to read:

11810. It is the intent of the Legislature to provide maximum flexibility in the use of federal and state alcohol and other drug program funds. County government is therefore given broad authority in determining the methods for encouragement of citizen participation, the scope of problem analysis, and the methods of planning for alcohol and other drug program services.

SEC. 74. Section 11811 of the Health and Safety Code is amended to read:

11811. Counties shall have broad discretion in the choice of services they utilize to alleviate the alcohol and other drug problems of specific population groups and the community. Those services shall include services for alcohol and other drug abuse prevention and treatment.

SEC. 75. Section 11811.1 of the Health and Safety Code is amended to read:

11811.1. (a) The major purpose of prevention and early intervention activities includes, but is not limited to, all of the following:

(1) To facilitate positive change in community and individual understanding, values, attitudes, environmental factors, and behavior concerning alcohol and its inappropriate use and other drug use.

(2) To reduce the likelihood of the inappropriate use of alcohol and other drugs by developing and implementing public policies designed to reduce or limit alcohol and other drug consumption.

(3) To lessen the stigmatization of persons who seek help for problems related to inappropriate alcohol use and other drug use.

(4) To provide information so that the public may make informed personal and public policy decisions regarding the inappropriate use and nonuse of alcoholic beverages and other drugs.

(5) To enlighten the ''helping professions'' to recognize persons with alcohol and other drug problems and to offer them appropriate services.

(6) To encourage persons to seek early help for their alcohol or other drug problems.

(b) The Legislature recognizes that the effective provision of the activities specified in subdivision (a) will result in an increased demand upon, and utilization of, existing services to alcohol and other drug abusers and their families. However, the Legislature believes that provision of effective prevention and early intervention activities over the next decade will result in saving taxpayers funds that might otherwise have to be expended for higher health and safety costs.

SEC. 76. Section 11811.3 of the Health and Safety Code is amended to read:

11811.3. In addition to the services described in Section 11811, a county may provide other services or programs pursuant to this section, including, but not limited to, the following:

(a) (1) Occupational programs for county employees designed to help recognize employees with alcohol and other drug problems that affect their job performance and to encourage these employees to seek services to alleviate those problems.

(2) It is the intent of the Legislature to encourage every county to institute a program described in paragraph (1) for its own employees in order to set an example for the community regarding local government's attitude toward alcohol and other drug problems.

(b) (1) Counties may use funds allocated to them by the department for any other services authorized in Section 11811 or this section.

(2) It is the intent of the Legislature that counties make maximum utilization of vocational rehabilitation services, where reasonable and appropriate to do so. A county, pursuant to a resolution by the board of supervisors, may utilize funds for other authorized services pursuant to Section 11811.

SEC. 77. Section 11811.5 of the Health and Safety Code is amended to read:

11811.5. A county may also utilize funds for the following:

(a) Planning, program development, and administration by the county. The department shall establish uniform definitions of the elements of county alcohol and other drug program administration and shall set the minimum and maximum levels of administrative services, taking into account the total funds expended pursuant to the county plan, negotiated net amount contract, and Drug Medi-Cal contract, whichever is applicable.

(b) In conducting planning, evaluation, and research activities to develop and implement the county alcohol and other drug program, counties may contract with appropriate public or private agencies.

(c) Actual and necessary expenses incurred by the alcohol and drug program administrator relating to attendance at not more than four meetings each year of the administrators and reasonable dues for any related activities and meetings. Each administrator of a county that applies for funds under this part shall attend each quarterly meeting, unless a waiver is provided for by the department.

SEC. 78. Section 11811.6 of the Health and Safety Code is amended to read:

11811.6. (a) The department shall consult with alcohol and drug program administrators in establishing standards pursuant to Chapter 7 (commencing with Section 11830) and regulations pursuant to Chapter 8 (commencing with Section 11835), shall consult with alcohol and drug program administrators on matters of major policy and administration, and may consult with alcohol and drug program administrators on other matters affecting persons with alcohol and other drug problems. The alcohol and drug program administrators may organize, adopt bylaws, and annually elect officers. The administrators shall consist of all legally appointed alcohol and drug administrators in the state as designated pursuant to subdivision (a) of Section 11800.

(b) Actual and necessary expenses for attendance at special meetings of the committees of the alcohol and drug program administrators called by the director shall be legally charged against any funds available for the administration of this section.

SEC. 79. Section 11811.7 of the Health and Safety Code is amended to read:

11811.7. Services financed under this part shall:

(a) Be provided on a voluntary basis only, except as provided in Article 1.5 (commencing with Section 5170) of Chapter 2 of Part 1 of Division 5 of the Welfare and Institutions Code.

(b) Encourage persons utilizing services, and members of their family, to participate in community self-help groups providing ongoing support to alcohol and other drug abusers and their family members.

(c) Encourage persons suffering from alcoholism and other drug problems to abstain from the use of alcohol and illicit drugs.

SEC. 80. Section 11812 of the Health and Safety Code is amended to read:

11812. The following conditions apply to county expenditures of state funds pursuant to this part:

(a) Where the services specified in the approved county plan are provided pursuant to other general health or social programs, only that

portion of the services dealing with alcohol and other drug problems may be financed under this part.

(b) (1) Each county shall utilize available privately operated alcohol and other drug programs and services in the county prior to utilizing new county-operated programs and services, or city-operated programs and services pursuant to Section 11796.1, when the available privately operated programs and services are as favorable in quality and cost as are those operated by the county or city. When these privately operated programs and services are not available, the county shall make a reasonable effort to encourage the development of privately operated programs and services prior to developing county-operated or city-operated programs and services.

(2) The county alcohol and drug program administrator shall demonstrate to the board of supervisors, and to the department, prior to development of any new program or service, that reasonable efforts have been made to comply with paragraph (1). All available local public or private programs and services, as described in paragraph (1), that are appropriate shall be utilized prior to using services provided by hospitals.

(c) All personal information and records obtained by the county, any program that has a contract with the county, or the department pursuant to this section are confidential and may be disclosed only in those instances designated in Section 5328 of the Welfare and Institutions Code.

(1) Any person may bring an action against an individual who has willingly and knowingly released confidential information or records concerning that person in violation of this section, for the greater of the following amounts:

(A) Five hundred dollars ($500).

(B) Three times the amount of actual damages, if any, sustained by the plaintiff.

(2) (A) Any person may, in accordance with Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, bring an action to enjoin the release of confidential information or records in violation of this chapter, and may in the same action seek damages as provided in this section.

(B) It is not a prerequisite to an action under this section that the plaintiff suffer or be threatened with actual damages.

(d) The department may require that each county and any public or private provider of alcohol and other drug services that receives any state funds under this part provide any information requested by the department relating to any application for or receipt of federal or other nonstate funds, including fees, donations, grants, and other revenues, for alcohol and other drug abuse services provided by these agencies.

SEC. 81. Section 11812.6 of the Health and Safety Code is amended to read:

11812.6. (a) In addition to any other services authorized under this chapter, the department shall urge the county, in the county plan, to develop within existing resources specific policies and procedures to address the unique treatment problems presented by persons who are both mentally disordered and chemically dependent. If contained in the county plan, priority shall be given to developing policies and procedures that relate to the diagnosis and treatment of homeless persons who are mentally disordered and chemically dependent.

(b) The director shall consult with the Director of Mental Health in developing guidelines for county mental health and alcohol and drug treatment programs in order to comply with this section.

SEC. 82. Section 11813 of the Health and Safety Code is amended to read:

11813. Nothing in this part shall prohibit a county from appropriating funds for alcohol and other drug programs and services in addition to the funds allocated by the department.

SEC. 83. Section 11814 of the Health and Safety Code is amended to read:

11814. (a) The department shall issue allocations to counties for alcohol and other drug programs.

(b) In issuing allocations to counties, it is the intent of the Legislature that counties shall allocate all funds received pursuant to state and federal laws and regulations.

(c) The department shall estimate an allocation of state and federal funds available for each county to implement the approved county plan, executed negotiated net amount contract, and Drug Medi-Cal contract, whichever is applicable. In making allocations, the department shall base its allocations on the population of each county. However, the department shall assure that each small population county receives a minimum amount of funds to provide adequate alcohol and other drug services. The department may take into account other factors in making the allocations if the department finds that the factors relate to the level of alcohol and other drug problems in the county. No later than 45 days after introduction of the Budget Bill, the department shall notify each county regarding its preliminary allocation under this division, pending enactment of the Budget Bill. The 1984–85 fiscal year shall establish the base funding for the county alcohol and drug allocation for local programs. Beginning with the 1985–86 fiscal year, cost-of-living adjustments, if granted, shall be considered as tied to the base allocation established in the 1984–85 fiscal year, plus any subsequent cost-of-living adjustments. The department shall notify each county regarding its final allocation after enactment of the Budget Bill.

(d) Notwithstanding any other provision in this section, the director may reduce funding below the base year amounts of counties that underspend their allocation for two consecutive years by more than 5 percent. Any reduction shall be limited to the difference between 5 percent of the allocation and the total amount unspent. The amounts underspent shall be determined based on the most recent cost reports.

SEC. 84. Section 11814.5 of the Health and Safety Code is repealed.

SEC. 85. Section 11817.1 of the Health and Safety Code is amended to read:

11817.1. The department may reallocate among counties any savings that occur during the fiscal year in programs or services or any allocations either not applied for by a county or not in compliance with this part. Reallocations may be made to counties by amendment to their county plans or negotiated net amount contracts.

SEC. 86. Section 11817.3 of the Health and Safety Code is amended to read:

11817.3. (a) There shall be an appropriation from the Budget Act to the department to fund programs and services to alleviate problems related to inappropriate alcohol use or other drug use as provided for in this part. However, if the state receives additional funds from the federal government after the enactment of the Budget Act, which funds may be augmented by the Director of Finance to the appropriation described in this section in accordance with the Budget Act, then the department shall determine the amount of those funds to be used for allocation to counties, and shall allocate that amount to counties with approved amended county plans, executed negotiated net amount contracts, and amended Drug Medi-Cal contracts, whichever is applicable, within 90 days of receipt of the additional funds to support programs and services to alleviate alcohol-related and other drug-related problems as described in this subdivision. The allocation of all funds pursuant to this subdivision shall comply with federal requirements and with any requirements pursuant to Section 28.00 of the Budget Act.

(b) The requirement set forth in subdivision (a) that the department determine the amount of additional funds to be used for allocation to counties and allocate that amount to counties within 90 days, shall be waived when the 90-day period does not allow sufficient time for completion of the notification period pursuant to Section 28.00 of the Budget Act.

(c) As used in this section, ''approved amended county plan'' means a county plan amended by a county to describe the county's proposed use of the additional or reduced funds available pursuant to this section, which plan is approved by the department.

(d) As used in this section, ''executed negotiated net amount contract'' or ''amended Drug Medi-Cal contract'' refers to a contract that

is amended by a county to describe the county's proposed use of the additional or reduced funds available pursuant to this section, which contract is approved by the department.

SEC. 87. Section 11817.4 of the Health and Safety Code is amended to read:

11817.4. Alcohol and other drug service expenditures made by counties pursuant to this part shall be paid by the state pursuant to this part.

SEC. 88. Section 11817.8 of the Health and Safety Code is repealed.

SEC. 89. Section 11817.8 is added to the Health and Safety Code, to read:

11817.8. (a) It is the intent of the Legislature that the state and the counties work together to minimize audit exceptions. Audit findings as contained in the department audit reports may be appealed by counties directly to the department. Counties may retain disputed audit amounts of state and federal funds unless an audit appeal is filed, and then until the audit appeal is resolved, in whole or in part, against the county.

(b) The department shall audit the expenditures of counties, direct contractors, and subcontractors. The department shall develop an annual audit plan that will identify the counties, direct contractors, and subcontractors funded in whole or in part with the funds administered by the department. The annual audit plan shall consist of a sufficient number of audits and financial reviews to provide reasonable assurance that federal and state funds have been used for their intended purpose in accordance with applicable funding requirements and restrictions contained in statutes, regulations, and contracts.

(c) The department may conduct audits and financial related reviews on other than a routine basis of any county, direct contractor, or county subcontractor funded in whole or in part with funds administered by the department, as the department deems necessary and appropriate.

(d) Counties may audit the expenditures of organizations funded in whole or in part with funds administered by the department.

(e) Notwithstanding subdivision (e) of Section 11758.12, counties shall repay to the department amounts of state and federal funds found, as a result of an audit, not to have been expended in accordance with the requirements set forth in this part, federal block grant law, federal or state regulations pertaining to alcohol or other drug abuse services, and the conditions set forth in any contract or interagency agreement. For organizations or services and the conditions set forth in any combination of state, federal, or other public funds, where a clear audit trail shows that the source and application of these funds is not maintained, repayment shall be determined by prorating audit findings between each funding source.

(f) For those audits conducted by the department, the director shall administratively establish policies and procedures for the resolution of disputed audit findings. The department shall consult with county administrators when proposing changes in the procedures for the resolution of disputed audit findings.

(g) There is established in the State Treasury an Audit Repayment Trust Fund. All undisputed repayments of state funds made pursuant to subdivision (e) and all repayments of state funds resulting from an audit resolution procedure established pursuant to subdivision (f) shall be deposited in this fund. The money in the fund shall be available upon appropriation by the Legislature.

(h) The department may deny or withhold payments or advances of funds to a county if the department finds, by audit or otherwise, that a program is not in compliance with this part, the net amount contract, and Drug Medi-Cal contract, whichever is applicable.

(i) Notwithstanding subdivision (a) of Section 53134 of the Government Code, audits performed pursuant to this section shall be conducted by qualified state or local government auditors or independent public accountants in accordance with generally accepted governing auditing standards, as prescribed by Government Auditing Standards, issued by the Comptroller General of the United States. These audits shall be completed no later than six months after the completion of the audit fieldwork.

SEC. 90. Section 11818 of the Health and Safety Code is amended to read:

11818. (a) (1) Expenditures made by counties and contract providers that may be paid using appropriated funds subject to payment include salaries of personnel, approved facilities and services provided through contract, operation, maintenance, and service costs, depreciation of county facilities as established in the State of California's Auditing Standards and Procedures for Counties, disregarding depreciation on the county facility to the extent it was financed by state funds under this part, lease of facilities where there is no intention to, nor option to, purchase, and other expenditures that may be approved by the director.

(2) Expenditures made by counties and contract providers that may not be paid using appropriated funds subject to payment include expenditures for initial capital improvement, the purchase or construction of buildings, except for equipment items and remodeling expenses as may be provided in regulations of the department, compensation to members of a local advisory board on drug programs, except actual and necessary expenses incurred in the performance of official duties, and expenditures for a purpose for which state reimbursement is claimed under any other law.

(b) (1) Except as provided in Chapter 3 (commencing with Section 11758.10), the cost of services specified in the county plan, negotiated net amount contract, and Drug Medi-Cal contract, whichever is applicable, shall be based upon reimbursement of actual costs as determined with standard accounting practices. The county may enter into contracts with providers at actual cost or a negotiated rate. Negotiated rate is a specific and fixed dollar rate for a specified unit of service provided. Negotiated rates may be used as the cost of services only between the county and private providers. The negotiated rate shall be approved by the county prior to commencing services for reimbursement and the rate shall be based upon the projected cost of providing the services and projected revenues realized as a result of providing the services. The provider shall make available to the county information on prior years' actual cost of providing the services and actual revenues.

(2) (A) Providers that receive a combination of Medi-Cal funding and other federal or state funding for the same service element and location shall be reimbursed for actual costs as limited by Medi-Cal reimbursement requirements, as specified in Title XIX of the federal Social Security Act (42 U.S.C. 1396 et seq.), the medicaid state plan, subdivisions (c) and (d) of Section 51516 of Title 22 of the California Code of Regulations, except that reimbursement for non-Medi-Cal services shall not be limited by Medi-Cal rate requirements or customary charges to privately paying clients.

(B) For those providers who operate under a negotiated rate for non-Medi-Cal services, the rates shall be treated as provisional rates, subject to yearend settlement of actual costs.

(3) Notwithstanding any other provision of law, during yearend settlements, the department may pay, from both state and federal funds, prior fiscal year allowable Medi-Cal costs incurred by June 30 of the prior fiscal year that exceed the amount timely encumbered in the prior fiscal year contract.

SEC. 91. Section 11818.5 of the Health and Safety Code is amended to read:

11818.5. (a) Counties shall submit a cost report reflecting the expenditure of funds allocated by the department. An annual cost report for the fiscal year ending June 30 shall be submitted to the department by November 1.

(b) Each county shall be responsible for reviewing its contracts with providers of services and the department may audit these contracts. The cost reports shall be reviewed by the department and interim settlements of claims shall be made expeditiously with each county. Final settlement shall be made at the time of audit, which shall be completed within three years of the date the cost report was accepted for interim settlement by

the department. If the audit is not completed within three years, the interim settlement shall be considered as the final settlement.

(c) Counties shall report estimated numbers and characteristics of clients-participants by type of service in the county plan and shall report actual numbers and characteristics of clients-participants served by type of service with the annual cost report. The department shall specify forms and procedures to be followed in reporting this information. The fiscal reporting system established pursuant to this section shall supersede the requirements of paragraph (2) of subdivision (b) of Section 16366.7 of the Government Code for a quarterly fiscal reporting system.

SEC. 92. Section 11820 of the Health and Safety Code is amended to read:

11820. The Legislature recognizes the potential positive impact that federal, state, and local health planning agencies can have on the alleviation of alcohol and other drug problems through better coordinated planning and utilization of limited health resources. The Legislature encourages persons concerned with alcohol and other drug problems to become involved as much as possible as representatives on health planning agencies, and committees thereof, and in providing advice and comments on health plans of those agencies.

SEC. 93. Section 11820.1 of the Health and Safety Code is amended to read:

11820.1. The department shall work together with the Office of Statewide Health Planning and Development and any other statewide health planning agencies created pursuant to Public Law 93-641 in the preparation and implementation of the state health plan required under that act. The department shall seek the advice and comments of public and private agencies and individuals concerned with alcohol and other drug problems prior to submission by the department of any draft plans to the office.

SEC. 94. Section 11825 of the Health and Safety Code is amended to read:

11825. The department may establish reasonable criteria to evaluate the performance of programs and services that are described in the county plan.

SEC. 95. Section 11826 of the Health and Safety Code is amended to read:

11826. The department may do all of the following:

(a) Review and conduct evaluation studies of service delivery to clients in programs receiving state allocated funds.

(b) Conduct investigative reporting.

(c) Disseminate evaluation studies, reports, articles, and other reference documents.

(d) Evaluate the administration of county alcohol and other drug programs to determine whether the county provides for adequate administration of the county alcohol and other drug program.

SEC. 96. Section 11827 of the Health and Safety Code is amended to read:

11827. The Legislature recognizes that local program effectiveness may be evaluated in a variety of ways, but should reflect the needs and priorities of the local community and attempt to measure the achievement of objectives determined through the planning process described in this part. The Legislature further recognizes that the conducting of these evaluations is essential to holding county alcohol and other drug programs accountable for their use of state funds and increasing program effectiveness. The Legislature recognizes the beneficial results of the local evaluation process to those participating in this process, as described in the county plan.

The Legislature desires to encourage experimentation and diversity in the methods utilized by counties to evaluate the county alcohol and other drug programs' achievement of their objectives, including, but not limited to, evaluations of individuals' progress, changes in utilization rates, changes in community attitudes, and measurement of specific programmatic goals in order to advance our knowledge about the effectiveness of programs in alleviating alcohol and other drug problems.

SEC. 97. Section 11828 of the Health and Safety Code is amended to read:

11828. Each county shall assure the evaluation of all state-funded programs to determine whether they have achieved their objectives as determined in the planning process. In addition, recognizing the difficulty and expense of conducting effective county alcohol and other drug program evaluation, the department may assist counties in developing evaluation designs for implementation by counties to measure progress of alcohol or other drug users, changes in community attitudes toward inappropriate alcohol use and other drug problems, changes in the incidence and prevalence of alcohol and other drug problems within the county, or other objectives identified in the planning process. The department, in cooperation with counties that choose to participate, may assist and fund counties to implement the evaluation designs developed. Counties may contract with public or private agencies and utilize funds allocated under this part for purposes of conducting the evaluations.

SEC. 98. Section 11830 of the Health and Safety Code, as amended by Section 2 of Chapter 919 of the Statutes of 1989, is amended to read:

11830. The department shall take the following goals and objectives into consideration in the implementation of this chapter:

(a) The significance of community-based programs to alcohol and other drug abuse recovery shall not be diminished.

(b) Opportunities for low-income and special needs populations to receive alcohol and other drug abuse recovery or treatment services shall be encouraged.

SEC. 99. Section 11830 of the Health and Safety Code, as amended by Section 64 of Chapter 938 of the Statutes of 1995, is amended and renumbered to read:

11830.1. In order to ensure quality assurance of alcohol and other drug programs and expand the availability of funding resources, the department shall implement a program certification procedure for alcohol and other drug treatment recovery services funded under this part. The department, after consultation with the County Alcohol and Drug Program Administrators Association of California, and other interested organizations and individuals, shall develop standards and regulations for the alcohol and other drug treatment recovery services describing the minimal level of service quality required of the service providers to qualify for and obtain state certification. The standards shall be excluded from the rulemaking requirements 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). Compliance with these standards shall be voluntary on the part of programs. For the purposes of Section 2626.2 of the Unemployment Insurance Code, certification shall be equivalent to program review.

SEC. 100. Section 11830.5 of the Health and Safety Code is amended to read:

11830.5. (a) The department, in consultation with the county alcohol and drug program administrators and other interested organizations and individuals, shall develop program standards specific to each type of residential and nonresidential program, to be used during its certification process. These standards shall be advisory only and are excluded from the provisions of Section 11340.5 of the Government Code and other rulemaking requirements 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 Chapter 8 (commencing with Section 11835).

(b) The program standards shall include, but not be limited to, both of the following:

(1) Recognition and characterization of different approaches and solutions to the alcohol and drug problems that the department determines have sufficient merit for a separate standard.

(2) Reference to the needs of youth, the elderly, women, pregnant women, mothers and their children, gays, lesbians, the disabled, and

special populations, with recognition of innovative solutions to the problems of those special populations.

(c) The program standards shall serve as educational documents to inform the public of the current state-of-the-art in effective and cost-efficient alcohol and drug problem programming.

SEC. 101. Section 11831 of the Health and Safety Code, as added by Section 64 of Chapter 1328 of the Statutes of 1984, is amended and renumbered to read:

11831.2. The department may charge a reasonable fee as the department deems necessary for the certification or renewal certification of a program that voluntarily requests the certification. The fee shall be set at a level sufficient to cover administrative costs of the program certification process incurred by the department. In calculating the administrative costs, the department shall include staff salaries and benefits, related travel costs, and state operational and administrative costs.

SEC. 102. Section 11831.5 of the Health and Safety Code is amended to read:

11831.5. (a) Certification shall be granted by the department pursuant to this section to any alcoholism or drug abuse recovery or treatment program wishing to receive, and requesting, the certification regardless of the source of the program's funding.

(b) The purposes of certification under this section shall be all of the following:

(1) To identify programs that exceed minimal levels of service quality, are in substantial compliance with the department's standards, and merit the confidence of the public, third-party payers, and county alcohol and drug programs.

(2) To encourage programs to meet their stated goals and objectives.

(3) To encourage programs to strive for increased quality of service through recognition by the state and by peer programs in the alcoholism and drug field.

(4) To assist programs to identify their needs for technical assistance, training, and program improvements.

(c) Certification may be granted under this section on the basis of evidence satisfactory to the department that the requesting alcoholism or drug abuse recovery or treatment program has an accreditation by a statewide or national alcohol or drug program accrediting body. The accrediting body shall provide accreditation that meets or exceeds the department's standards and is recognized by the department.

(d) No fee shall be levied by the department for certification of nonprofit organizations or local governmental entities under this section.

(e) Certification, or the lack thereof, shall not convey any approval or disapproval by the department, but shall be for information purposes only.

(f) The standards developed pursuant to Section 11830 and the certification under this section shall satisfy the requirements of Section 1463.16 of the Penal Code.

(g) The department and the State Department of Social Services shall enter into a memorandum of understanding to establish a process by which the Department of Alcohol and Drug Programs can certify residential facilities or programs serving primarily adolescents, as defined in paragraph (1) of subdivision (a) of Section 1502, that have programs that primarily serve adolescents and provide alcohol and other drug recovery or treatment services.

SEC. 103. Section 11835 of the Health and Safety Code is amended to read:

11835. (a) The purposes of any regulations adopted by the department shall be to implement, interpret, or make specific the provisions of this part and shall not exceed the authority granted to the department pursuant to this part. To the extent possible, the regulations shall be written in clear and concise language and adopted only when necessary to further the purposes of this part.

(b) Except as provided in this section, the department may adopt 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 the Title 2 of the Government Code) necessary for the proper execution of the powers and duties granted to and imposed upon the department by this part. However, these regulations may be adopted only upon the following conditions:

(1) Prior to adoption of regulations, the department shall consult with county alcohol and drug program administrators and may consult with any other appropriate persons relating to the proposed regulations.

(2) If an absolute majority of the designated county alcohol and drug program administrators who represent counties that have submitted county plans, negotiated net amount contracts, or Drug Medi-Cal contracts, vote at a public meeting called by the department, for which 45 days' advance notice shall be given by the department, to reject the proposed regulations, the department shall refer the matter for a decision to a committee, consisting of a representative of the county alcohol and drug program administrators, the director, the secretary, and one designee of the secretary. The decision shall be made by a majority vote of this committee at a public meeting convened by the department. Upon a majority vote of the committee recommending adoption of the proposed regulations, the department may then adopt them. Upon a majority vote recommending that the department not adopt the proposed

regulations, the department shall then consult again with the county alcohol and drug program administrators and resubmit the proposed regulations to the administrators for a vote pursuant to this subdivision.

(3) In the voting process described in paragraph (2), no proxies shall be allowed nor may anyone other than the designated county alcohol and drug program administrator, director, secretary, and secretary's designee vote at the meetings.

SEC. 104. The heading of Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code is amended to read:

CHAPTER 9. SERVICES TO PERSONS CONVICTED FOR DRIVING WHILE UNDER THE INFLUENCE OF ALCOHOL AND OTHER DRUGS

SEC. 105. Section 11836 of the Health and Safety Code is amended to read:

11836. (a) The department shall have the sole authority to issue, deny, suspend, or revoke the license of a driving-under-the-influence program. As used in this chapter, ''program'' means any firm, partnership, association, corporation, local governmental entity, agency, or place that has been initially recommended by the county board of supervisors, subject to any limitation imposed pursuant to subdivisions (c) and (d), and that is subsequently licensed by the department to provide alcohol or drug recovery services in that county to any of the following:

(1) A person whose license to drive has been administratively suspended or revoked for, or who is convicted of, a violation of Section 23152 or 23153 of the Vehicle Code, and admitted to a program pursuant to Section 13352, 23538, 23542, 23548, 23552, 23556, 23562, or 23568 of the Vehicle Code.

(2) A person who is convicted of a violation of subdivision (b), (c), (d), or (e) of Section 655 of the Harbors and Navigation Code, or of Section 655.4 of that code, and admitted to the program pursuant to Section 668 of that code.

(3) A person who has pled guilty or nolo contendere to a charge of a violation of Section 23103 of the Vehicle Code, under the conditions set forth in subdivision (c) of Section 23103.5 of the Vehicle Code, and who has been admitted to the program under subdivision (e) of Section 23103.5 of the Vehicle Code.

(4) A person whose license has been suspended, revoked, or delayed due to a violation of Section 23140, and who has been admitted to a program under Article 2 (commencing with Section 23502) of Chapter 1 of Division 11.5 of the Vehicle Code.

(b) If a firm, partnership, corporation, association, local government entity, agency, or place has, or is applying for, more than one license, the department shall treat each licensed program, or each program seeking licensure, as belonging to a separate firm, partnership, corporation, association, local government entity, agency, or place for the purposes of this chapter.

(c) For purposes of providing recommendations to the department pursuant to subdivision (a), a county board of supervisors may limit its recommendations to those programs that provide services for persons convicted of a first driving-under-the-influence offense, or services to those persons convicted of a second or subsequent driving-under-the-influence offense, or both services. If a county board of supervisors fails to provide recommendations, the department shall determine the program or programs to be licensed in that county.

(d) After determining a need, a county board of supervisors may also place one or more limitations on the services to be provided by a driving-under-the-influence program or the area the program may operate within the county, when it initially recommends a program to the department pursuant to subdivision (a).

(1) For purposes of this subdivision, a board of supervisors may restrict a program for those convicted of a first driving-under-the-influence offense to providing only a three-month program, or may restrict a program to those convicted of a second or subsequent driving-under-the-influence offense to providing only an 18-month program, as a condition of its recommendation.

(2) A board of supervisors may not place any restrictions on a program that would violate any statute or regulation.

(3) When recommending a program, if a board of supervisors fails to place any limitation on a program pursuant to this subdivision, the department may license that program to provide any driving-under-the-influence program services that are allowed by law within that county.

(4) This subdivision is intended to apply only to the initial recommendation to the department for licensure of a program by the county. It is not intended to affect any license that has been previously issued by the department or the renewal of any license for a driving-under-the-influence program. In counties where a contract or other written agreement is currently in effect between the county and a licensed driving-under-the-influence program operating in that county, this subdivision is not intended to alter the terms of that relationship or the renewal of that relationship.

SEC. 106. Section 11837.2 of the Health and Safety Code is amended to read:

11837.2. (a) (1) The court may refer persons only to licensed programs. Subject to these provisions, a person is eligible to participate in the program if the program is operating in any of the following:

(A) The county where the person is convicted.

(B) The county where the person resides.

(C) A county that has an agreement with the person's county of residence pursuant to Section 11838.

(D) A county to which a person may request transfer pursuant to subdivision (d).

(2) If a person granted probation under Section 23542 or 23562 of the Vehicle Code cannot be referred to a licensed 18-month program pursuant to this section, Section 13352.5 of the Vehicle Code does not apply.

(b) If a person has consented to participate in a licensed program and the county where the person is convicted is the same county in which the person resides, the court may order the person to participate in a licensed program within that county, or, if that county does not have a licensed program, the court may order that person to participate in a licensed program within another county, pursuant to Section 11838.

(c) If a person has consented to participate in a licensed program in the county in which that person resides or in a county in which the person's county of residence has an agreement pursuant to Section 11838, and the county where the person is convicted is not the county where the person resides, and if the court grants the person summary probation, the court may order the person to participate in a licensed program in that county. In lieu of summary probation, the court may utilize the probation officer to implement the orders of the court. If the county in which the person resides does not have a licensed program or an agreement with another county pursuant to Section 11838 and the person consents, the court may order the person to participate in a licensed program within the county where that person is convicted or in a county with which the county has an agreement pursuant to Section 11838.

(d) Except as otherwise provided in subdivision (e), subsequent to a person's commencement of participation in a program, the person may request transfer to another licensed program (1) in the same county in which the person has commenced participation in the program, upon approval of that county's alcohol and drug program administrator, or (2) in a county other than the county in which the person has commenced participation in the program, upon approval of the alcohol and drug program administrator of the county in which the person is participating and the county to which the person is requesting transfer.

(e) Subdivision (d) does not apply (1) if the court has ordered the person to participate in a specific licensed program, unless the court

orders the transfer or, (2) if the person is under formal probation, unless the probation officer consents to the transfer. The department shall establish reporting forms and procedures to ensure that the court receives notice of any program transfer pursuant to this subdivision or subdivision (d).

(f) Jurisdiction of all postconviction matters arising pursuant to this section may be retained by the court of conviction.

(g) The department, in cooperation with the Department of Motor Vehicles and the county alcohol and drug program administrators, shall establish procedures to ensure the effective implementation of this section.

SEC. 107. Section 11837.3 of the Health and Safety Code is amended to read:

11837.3. (a) (1) Each county, through the county alcohol and drug program administrator, shall determine its ability to establish, through public or private resources, a program of alcohol and other drug education and counseling services for a person whose license to drive has been administratively suspended or revoked for, or who is convicted of, a first violation of Section 23152 or 23153 of the Vehicle Code, or who is convicted of a violation of subdivision (b), (c), (d), or (e) of Section 655 of, or Section 655.4 of, the Harbors and Navigation Code, pursuant to subdivisions (e) and (f) of Section 668 of the Harbors and Navigation Code. The program shall be self-supporting through fees collected from program participants. The program shall be of at least three months' duration and consist of at least 30 hours of direct education and counseling services. The program shall be authorized by each county and licensed by, and operated under general regulations established by, the department.

(2) (A) A county that shows the department that it has insufficient resources, insufficient potential program participants, or other material disadvantages is not required to establish a program.

(B) The department may license an alcohol and other drug education program that is less than 30 hours in length in any county where the board of supervisors has provided the showing pursuant to subparagraph (A), and the department has upheld that showing. The shorter program is subject to all other applicable regulations developed by the department pursuant to paragraph (3) of subdivision (b) of Section 11837.4.

(b) Each county that has approved an alcohol and other drug education program or programs and that is licensed by the department shall make provision for persons who can document current inability to pay the program fee, in order to enable those persons to participate. The county shall require that the program report the failure of a person referred to the program to enroll in the program to the referring court.

(c) In order to assure effectiveness of the alcohol and other drug education and counseling program, the county shall provide, as appropriate, services to ethnic minorities, women, youth, or any other group that has particular needs related to the program.

(d) (1) Any person required to successfully complete an alcohol and other drug education and counseling program as a condition of probation shall enroll in the program and, except when enrollment is required in a program that is required to report failures to enroll to the court, shall furnish proof of the enrollment to the court within the period of time and in the manner specified by the court. The person also shall participate in and successfully complete the program, and shall furnish proof of successful completion within the period of time and in the manner specified by the court.

(2) An alcohol and other drug education and counseling program shall report to the court, within the period of time and in the manner specified by the court, the name of any person who fails to successfully complete the program.

SEC. 108. Section 11837.4 of the Health and Safety Code is amended to read:

11837.4. (a) No program, regardless of how it is funded, may be licensed unless all of the requirements of this chapter and of the regulations adopted pursuant to this chapter have been met.

(b) Each licensed program shall include, but not be limited to, the following:

(1) For the alcohol or drug education and counseling services programs specified in subdivision (b) of Section 11837, each program shall provide for close and regular face-to-face interviews. For the 18-month programs specified in subdivision (a) of Section 11837, each program shall provide for close and regular supervision of the person, including face-to-face interviews at least once every other calendar week, regarding the person's progress in the program for the first 12 months of the program and shall provide only community reentry supervision during the final six months of the program. In the last six months of the 18-month program, the provider shall monitor the participant's community reentry activity with self-help groups, employment, family, and other areas of self-improvement. Unless otherwise ordered by the court, the provider's monitoring services are limited to not more than six hours. For the 30-month programs specified in subdivision (b) of Section 23548, subdivision (b) of Section 23552, and subdivision (b) of Section 23568 of the Vehicle Code, each program shall provide for close and regular supervision of the person, including regular, scheduled face-to-face interviews over the course of 30 months regarding the person's progress in the program and recovery from problem drinking, alcoholism, chemical dependency, or polydrug abuse,

as prescribed by regulations of the department. The interviews in any of those programs shall be conducted individually with each person being supervised and shall occur at times other than when the person is participating in any group or other activities of the program. No program activity in which the person is participating shall be interrupted in order to conduct the individual interviews.

(2) (A) The department shall approve all fee schedules for the programs and shall require that each program be self-supporting from the participants' fees and that each program provide for the payment of the costs of the program by participants at times and in amounts commensurate with their ability to pay in order to enable these persons to participate. Each program shall make provisions for persons who can successfully document current inability to pay the fees. Only the department may establish the criteria and procedures for determining a participant's ability to pay. The department shall ensure that the fees are set at amounts that will enable programs to provide adequately for the immediate and long-term continuation of services required pursuant to this chapter. The fees shall be used only for the purposes set forth in this chapter, except that any profit or surplus that does not exceed the maximum level established by the department may be utilized for any purposes allowable under any other provisions of law. In its regulations, the department shall define, for the purposes of this paragraph, taking into account prudent accounting, management, and business practices and procedures, the terms ''profits'' and ''surplus.'' The department shall fairly construe these provisions so as not to jeopardize fiscal integrity of the programs. The department may not license any program if the department finds that any element of the administration of the program does not assure the fiscal integrity of the program.

(B) Each program licensed by the department under this section may request an increase in the fees. The request for an increase shall initially be sent to the county alcohol and drug program administrator. The county alcohol and drug program administrator shall, within 30 days of receiving the request, forward it to the department with the administrator's recommendation that the fee increase be approved or disapproved.

(C) The administrator's recommendation shall, among other things, take into account the rationale that the program has provided to the administrator for the increase and whether that increase would exceed the profit or surplus limit established by the department.

(D) If the county alcohol and drug program administrator fails to forward the request to the department within the 30 days, the program may send the request directly to the department. In this instance, the department may act without the administrator's recommendation.

(E) The department shall, within 30 days of receiving the request pursuant to subparagraph (B) or (D) approve or disapprove the request. In making its decision, the department shall consider the matters described in subparagraph (C).

(3) The licensed programs described in paragraph (1) shall include a variety of treatment services for problem drinkers, alcoholics, chemical dependents, and polydrug abusers or shall have the capability of referring the persons to, and regularly and closely supervising the persons while in, any appropriate medical, hospital, or licensed residential treatment services or self-help groups for their problem drinking, alcoholism, chemical dependency, or polydrug abuse problem. In addition to the requirements of paragraph (1), the department shall prescribe in its regulations what other services the program shall provide, at a minimum, in the treatment of participants, which services may include lectures, classes, group discussions, group counseling, or individual counseling in addition to the interviews required by paragraph (1), or any combination thereof. However, any group discussion or counseling activity, other than classes or lectures, shall be regularly scheduled to consist of not more than 15 persons, except that they may, on an emergency basis, exceed 15, but not more than 17, persons, at any one meeting. At no time shall there be more than 17 persons in attendance at any one meeting. For the 30-month programs specified in subdivision (b) of Section 23548, subdivision (b) of Section 23552, and subdivision (b) of Section 23568 of the Vehicle Code, each licensed program shall include a method by which each participant shall maintain a compendium of probative evidence, as prescribed in the regulations of the department, on a trimonthly basis demonstrating a performance of voluntary community service by the participant, including, but not limited to, the prevention of drinking and driving, the promotion of safe driving, and responsible attitudes toward the use of chemicals of any kind, for not less than 120 hours and not more than 300 hours, as determined by the court, with one-half of that time to be served during the initial 18 months of program participation and one-half of that time to be served in the final 12 months. In determining whether or not the participant has met the objectives of the program, the compendium of evidence shall also include, and the court shall consider, the participant's demonstration of significant improvement in any of the following areas of personal achievement:

(A) Significant improvement in occupational performance, including efforts to obtain gainful employment.

(B) Significant improvement in physical and mental health.

(C) Significant improvement in family relations, including financial obligations.

(D) Significant improvement in financial affairs and economic stability.

The compendium of evidence shall be maintained by the participant for review by the program, court, probation officer, or other appropriate governmental agency. The program officials, unless prohibited by the referring court, shall make provisions for a participant to voluntarily enter, using the participant's own resources, a licensed chemical dependency recovery hospital or residential treatment program which has a valid license issued by the State of California to provide alcohol or drug services, and to receive three weeks of program participation credit for each week of that treatment, not to exceed 12 weeks of program participation credit, but only if the treatment is at least two weeks in duration. The program shall document probative evidence of this hospital or residential care treatment in the participant's program file.

(4) In order to assure program effectiveness, the department shall require, whenever appropriate, that the licensed program provides services to ethnic minorities, women, youth, or any other group that has particular needs relating to the program.

(5) The goal of each program shall be to assist persons participating in the program to recognize their chemical dependency and to assist them in their recovery.

(6) Each program shall establish a method by which the court, the Department of Motor Vehicles, and the person are notified in a timely manner of the person's failure to comply with the program's rules and regulations.

(c) No program may be licensed unless the county complies with the requirements of subdivision (b) of Section 11812. The provider of a program that offers an alcohol or drug education and counseling services program, an 18-month program, or a 30-month program or any or all of those programs described in this section shall be required to obtain only one license. The department's regulations shall specify the requirements for the establishment of each program. The license issued by the department shall identify the program or programs licensed to operate.

(d) (1) Departmental approval for the establishment of a 30-month program by a licensed 18-month program is contingent upon approval by the county alcohol and drug program administrator, based upon confirmation that the program applicant is capable of providing the service and that the fiscal integrity of the program applicant will not be jeopardized by the operation of the program.

(2) The court shall refer a person to a 30-month treatment program only if a 30-month program exists or is provided for in the jurisdiction of the court.

(e) A county or program shall not prescribe additional program requirements unless the requirements are specifically approved by the department.

(f) The department may license a program on a provisional basis.

SEC. 109. Section 11837.6 of the Health and Safety Code is amended to read:

11837.6. (a) The major responsibility for assuring programmatic and fiscal integrity of each program rests with the county alcohol and drug program administrator of each county utilizing a program pursuant to this chapter.

(b) The county alcohol and drug program administrator shall assure, through monitoring at least once every six months, compliance with the applicable statutes and regulations by any licensed program within the county's jurisdiction. Whenever possible, the county monitoring shall coincide with the state licensing reviews. The county alcohol and drug program administrator shall prepare and submit, to the department and the program provider, an annual written report of findings regarding the program's compliance with applicable statutes and regulations.

(c) The county alcohol and drug program administrator shall submit a description of each licensed program as part of the county plan.

(d) The county alcohol and drug program administrator shall notify the department, within 30 days of the date that a program's license is denied, suspended or revoked, of the individuals who failed to commence participation in another licensed program within 21 days of the license denial, suspension or revocation.

SEC. 110. Section 11837.7 of the Health and Safety Code is amended to read:

11837.7. (a) The county alcohol and drug program administrator, or the advisory board acting through the county alcohol and drug program administrator, shall inform the board of supervisors immediately if it is determined that any program is not meeting the regulations adopted by the department. The department shall be notified in writing by the county alcohol and drug program administrator of any program that is not in compliance with applicable statutes and regulations.

(b) The department, the county alcohol and drug program administrator, the chief probation officer, or their authorized representatives may enter, in a nondisruptive manner, any class, lecture, group discussion, or any other program element to observe these activities.

(c) Notwithstanding subdivision (a) of Section 11837.6, the department may audit, or contract for the auditing of, any licensed program.

SEC. 111. Section 11837.8 of the Health and Safety Code is amended to read:

11837.8. (a) The department shall authorize each county alcohol and drug program administrator to retain, in an amount not in excess of that specified by the department, a portion of the fees charged for participation in the program that is sufficient to reimburse the county for the costs and expenses that the administrator reasonably incurs in discharging his or her duties pursuant to this chapter.

(b) A county may not use for any purpose set forth in this chapter any funds allocated to it by the department pursuant to Division 10.5 (commencing with Section 11750). The board of supervisors may authorize the use of any other funds for any purpose set forth in this chapter.

(c) Notwithstanding subdivision (b), a county with a population of 20,000 or less may utilize funds allocated by the department to establish and administer a program if the department finds that the county cannot establish a self-supporting program at reasonable cost or is unable to establish jointly a program with another county. If an exception is granted, reasonable effort shall be made by the county to observe the intent of subdivision (b) that programs be self-supporting.

SEC. 112. Section 11837.9 of the Health and Safety Code is amended to read:

11837.9. The participation of the probation department in a program established pursuant to this chapter shall be described in the amendment to the county plan.

SEC. 113. Section 11838.1 of the Health and Safety Code is amended to read:

11838.1. The department, in cooperation with the county and the Department of Motor Vehicles, shall establish uniform statewide reporting procedures and forms for the submission of any appropriate documents or information from boards of supervisors, administrators of programs, county alcohol and drug program administrators, and program participants to assure effective implementation of this chapter.

SEC. 114. Chapter 10 (commencing with Section 11839) is added to Part 2 of Division 10.5 of the Health and Safety Code, to read:

CHAPTER 10. NARCOTIC TREATMENT PROGRAMS

Article 1. Narcotic Treatment Programs

11839. The department, with the approval of the Secretary of the Health and Human Services Agency, may contract with any public or private agency for the performance of any of the functions vested in the

department by this chapter. Any department of the state is authorized to enter into such a contract.

11839.1. The Legislature finds and declares that it is in the best interests of the health and welfare of the people of this state to coordinate narcotic treatment programs to use replacement narcotic therapy in the treatment of addicted persons whose addiction was acquired or supported by the use of a narcotic drug or drugs, not in compliance with a physician and surgeon's legal prescription, and to establish and enforce minimum requirements for the operation of all narcotic treatment programs in this state.

11839.2. The following controlled substances are authorized for use in replacement narcotic therapy by licensed narcotic treatment programs:

(a) Methadone.

(b) Levoalphacetylmethadol (LAAM) as specified in paragraph (10) of subdivision (c) of Section 11055.

11839.3. (a) In addition to the duties authorized by other statutes, the department shall perform all of the following:

(1) License the establishment of narcotic treatment programs in this state to use replacement narcotic therapy in the treatment of addicted persons whose addiction was acquired or supported by the use of a narcotic drug or drugs, not in compliance with a physician and surgeon's legal prescription, except that the Research Advisory Panel shall have authority to approve methadone or LAAM research programs. The department shall establish and enforce the criteria for the eligibility of patients to be included in the programs, program operation guidelines, such as dosage levels, recordkeeping and reporting, urinalysis requirements, take-home doses of methadone, security against redistribution of the replacement narcotic drugs, and any other regulations that are necessary to protect the safety and well-being of the patient, the local community, and the public, and to carry out this chapter. A program may admit a patient to narcotic maintenance or narcotic detoxification treatment seven days after completion of a prior withdrawal treatment episode. The arrest and conviction records and the records of pending charges against any person seeking admission to a narcotic treatment program shall be furnished to narcotic treatment program directors upon written request of the narcotic treatment program director provided the request is accompanied by a signed release from the person whose records are being requested.

(2) Inspect narcotic treatment programs in this state and ensure that programs are operating in accordance with the law and regulations. The department shall have sole responsibility for compliance inspections of all programs in each county. Annual compliance inspections shall consist of an evaluation by onsite review of the operations and records

of licensed narcotic treatment programs' compliance with applicable state and federal laws and regulations and the evaluation of input from local law enforcement and local governments, regarding concerns about the narcotic treatment program. At the conclusion of each inspection visit, the department shall conduct an exit conference to explain the cited deficiencies to the program staff and to provide recommendations to ensure compliance with applicable laws and regulations. The department shall provide an inspection report to the licensee within 30 days of the completed onsite review describing the program deficiencies. A corrective action plan shall be required from the program within 30 days of receipt of the inspection report. All corrective actions contained in the plan shall be implemented within 30 days of receipt of approval by the department of the corrective action plan submitted by the narcotic treatment program. For programs found not to be in compliance, a subsequent inspection of the program shall be conducted within 30 days after the receipt of the corrective action plan in order to ensure that corrective action has been implemented satisfactorily. Subsequent inspections of the program shall be conducted to determine and ensure that the corrective action has been implemented satisfactorily. For purposes of this requirement, ''compliance'' shall mean to have not committed any of the grounds for suspension or revocation of a license provided for under subdivision (a) of Section 11839.9 or paragraph (2) of subdivision (b) of Section 11839.9. Inspection of narcotic treatment programs shall be based on objective criteria including, but not limited to, an evaluation of the programs' adherence to all applicable laws and regulations and input from local law enforcement and local governments. Nothing in this section shall preclude counties from monitoring their contract providers for compliance with contract requirements.

(3) Charge and collect licensure fees. In calculating the licensure fees, the department shall include staff salaries and benefits, related travel costs, and state operational and administrative costs. Fees shall be used to offset licensure and inspection costs not to exceed actual costs.

(4) Study and evaluate, on an ongoing basis, narcotic treatment programs including, but not limited to, the adherence of the programs to all applicable laws and regulations and the impact of the programs on the communities in which they are located.

(5) Provide advice, consultation, and technical assistance to narcotic treatment programs to ensure that the programs comply with all applicable laws and regulations and to minimize any negative impact that the programs may have on the communities in which they are located.

(6) In its discretion, to approve local agencies or bodies to assist it in carrying out this chapter provided that the department may not delegate

responsibility for inspection or any other licensure activity without prior and specific statutory approval. However, the department shall evaluate recommendations made by county alcohol and drug program administrators regarding licensing activity in their respective counties.

(7) The director may grant exceptions to the regulations adopted under this chapter if he or she determines that this action would improve treatment services or achieve greater protection to the health and safety of patients, the local community, or the general public. No exception may be granted if it is contrary to, or less stringent than, the federal laws and regulations which govern narcotic treatment programs.

(b) It is the intent of the Legislature in enacting this section in order to protect the general public and local communities, that self-administered dosage shall only be provided when the patient is clearly adhering to the requirements of the program, and where daily attendance at a clinic would be incompatible with gainful employment, education, and responsible homemaking. The department shall define ''satisfactory adherence'' and shall ensure that patients not satisfactorily adhering to their programs shall not be provided take-home dosage.

(c) There is established in the State Treasury the Narcotic Treatment Program Licensing Trust Fund. All licensure fees collected from the providers of narcotic treatment service shall be deposited in this fund. Except as otherwise provided in this section, if funds remain in this fund after appropriation by the Legislature and allocation for the costs associated with narcotic treatment licensure actions and inspection of narcotic treatment programs, a percentage of the excess funds shall be annually rebated to the licensees based on the percentage their licensing fee is of the total amount of fees collected by the department. A reserve equal to 10 percent of the total licensure fees collected during the preceding fiscal year may be held in each trust account to reimburse the department if the actual cost for the licensure and inspection exceed fees collected during a fiscal year.

(d) Notwithstanding any provision of this code or regulations to the contrary, the department shall have sole responsibility and authority for determining if a state narcotic treatment program license shall be granted and for administratively establishing the maximum treatment capacity of any license. However, the department shall not increase the capacity of a program unless it determines that the licensee is operating in full compliance with applicable laws and regulations.

11839.4. The department shall impose a civil penalty of one hundred dollars ($100) per day for a program that fails to timely submit a corrective action plan, or to timely implement any corrective action when it has been found to not be in compliance with applicable laws and regulations as required in Section 11839.3.

11839.5. In addition to the duties authorized by other provisions, the department shall be responsible for licensing narcotic treatment programs to use replacement narcotic therapy in the treatment of addicted persons whose addiction was acquired or supported by the use of a narcotic drug or drugs, not in compliance with a physician and surgeon's legal prescription. No narcotic treatment program shall be authorized to use replacement narcotic therapy without first obtaining a license therefor as provided in this chapter. The department may license narcotic treatment programs on an inpatient or outpatient basis, or both. The department may also grant a state narcotic treatment license.

11839.6. (a) The department shall establish a program for the operation and regulation of office-based narcotic treatment programs. An office-based narcotic treatment program established pursuant to this section shall meet either of the following conditions:

(1) Hold a primary narcotic treatment program license.

(2) Be affiliated and associated with a primary licensed narcotic treatment program. An office-based narcotic treatment program meeting the requirement of this paragraph shall not be required to have a license separate from the primary licensed narcotic treatment program with which it is affiliated and associated.

(b) For purposes of this section, ''office-based narcotic treatment program'' means a program in which interested and knowledgeable physicians and surgeons provide addiction treatment services, and in which community pharmacies supply necessary medication both to these physicians and surgeons for distribution to patients and through direct administration and specified dispensing services.

(c) Notwithstanding any other provision of law or regulation, including Section 10020 of Title 9 of the California Code of Regulations, an office-based narcotic treatment program in a remote site that is affiliated and associated with a licensed narcotic treatment program may be approved by the department, if all of the following conditions are met:

(1) A physician may provide office-based addiction services only if each office-based patient is registered as a patient in the licensed narcotic treatment program and both the licensed narcotic treatment program and the office-based narcotic treatment program ensure that all services required under Chapter 4 (commencing with Section 10000) of Division 4 of Title 9 of the California Code of Regulations for the management of narcotic addiction are provided to all patients treated in the remote site.

(2) A physician in an office-based narcotic treatment program may provide treatment for a maximum of 20 patients under the appropriate United States Drug Enforcement Administration registration. The primary licensed narcotic treatment program shall be limited to its total

licensed capacity as established by the department, including the patients of physicians in the office-based narcotic treatment program.

(3) The physicians in the office-based narcotic treatment program shall dispense or administer pharmacologic treatment for narcotic addiction that has been approved by the federal Food and Drug Administration such as levoalphacetylmethadol (LAAM) or methadone.

(4) Office-based narcotic treatment programs, in conjunction with primary licensed narcotic treatment programs, shall develop protocols to prevent the diversion of methadone. The department may develop regulations to prevent the diversion of methadone.

(d) For purposes of this section, ''remote site'' means a site that is geographically or physically isolated from any licensed narcotic treatment program. Therefore, the requirements in this subdivision regarding a remote site do not apply to an office-based narcotic treatment program that holds a primary narcotic treatment program license.

(e) In considering an office-based narcotic treatment program application, the department shall independently weigh the treatment needs and concerns of the county, city, or areas to be served by the program.

(f) Nothing in this section is intended to expand the scope of the practice of pharmacy.

11839.7. (a) (1) Each narcotic treatment program authorized to use replacement narcotic therapy in this state, except narcotic treatment research programs approved by the Research Advisory Panel, shall be licensed by the department.

(2) Each narcotic treatment program, other than a program owned and operated by the state, county, city, or city and county, shall, upon application for licensure and for renewal of a license, pay an annual license fee to the department. July 1 shall be the annual license renewal date.

(3) The department shall set the licensing fee at a level sufficient to cover all departmental costs associated with licensing incurred by the department, but the fee shall not, except as specified in this section, increase at a rate greater than the Consumer Price Index plus 5 percent. The fees shall include the department's share of pro rata charges for the expenses of state government. The fee may be paid quarterly in arrears as determined by the department. Fees paid quarterly in arrears shall be due and payable on the last day of each quarter except for the fourth quarter for which payment shall be due and payable no later than May 31. A failure of a program to pay renewal license fees by the due date shall give rise to a civil penalty of one hundred dollars ($100) a day for each day after the due date. Second and subsequent inspection visits to narcotic treatment programs that are operating in noncompliance with

the applicable laws and regulations shall be charged a rate of one-half the program's annual license fee or one thousand dollars ($1,000), whichever is less, for each visit.

(4) Licensing shall be contingent upon determination by the department that the program is in compliance with applicable laws and regulations and upon payment of the licensing fee. A license shall not be transferable.

(5) (A) As used in this chapter, ''quarter'' means July, August, and September; October, November, and December; January, February, and March; and April, May, and June.

(B) As used in this chapter, ''license'' means a basic permit to operate a narcotic treatment program. The license shall be issued exclusively by the department and operated in accordance with a patient capacity that shall be specified, approved, and monitored solely by the department.

(b) Each narcotic treatment program, other than a program owned and operated by the state, county, city, or city and county, shall be charged an application fee that shall be at a level sufficient to cover all departmental costs incurred by the department in processing either an application for a new program license, or an application for an existing program that has moved to a new location.

(c) Any licensee that increases fees to the patient, in response to increases in licensure fees required by the department, shall first provide written disclosure to the patient of that amount of the patient fee increase that is attributable to the increase in the licensure fee. This provision shall not be construed to limit patient fee increases imposed by the licensee upon any other basis.

11839.8. The director may deny the application for initial issuance of a license if the applicant or any partner, officer, director, 10 percent or greater shareholder, or person proposed to be employed by the applicant under the authority of subdivision (c) of Section 2401 of the Business and Professions Code:

(a) Fails to meet the qualifications for licensure established by the department pursuant to this article. However, the director may waive any established qualification for licensure of a narcotic treatment program if he or she determines that it is reasonably necessary in the interests of the public health and welfare.

(b) Was previously the holder of a license issued under this article, and the license was revoked and never reissued or was suspended and not reinstated, or the holder failed to adhere to applicable laws and regulations regarding narcotic treatment programs while the license was in effect.

(c) Misrepresented any material fact in the application.

(d) Committed any act involving fraud, dishonesty, or deceit, with the intent to substantially benefit himself or herself or another or

substantially injure another, and the act is substantially related to the qualification, functions, or duties of, or relating to, a narcotic treatment program license.

(e) Was convicted of any crime substantially related to the qualifications, functions, or duties of, or relating to, a narcotic treatment program license.

(f) The director, in considering whether to deny licensure under subdivision (d) or (e), shall determine whether the applicant is rehabilitated after considering all of the following criteria:

(1) The nature and severity of the act or crime.

(2) The time that has elapsed since the commission of the act or crime.

(3) The commission by the applicant of other acts or crimes constituting grounds for denial of the license under this section.

(4) The extent to which the applicant has complied with terms of restitution, probation, parole, or any other sanction or order lawfully imposed against the applicant.

(5) Other evidence of rehabilitation submitted by the applicant.

(g) With respect to any other license issued to an applicant to provide narcotic treatment services, violated any provision of this article or regulations adopted under this article that relate to the health and safety of patients, the local community, or the general public. Violations include, but are not limited to, violations of laws and regulations applicable to take-home doses of methadone, urinalysis requirements, and security against redistribution of replacement narcotic drugs. In these cases, the department shall deny the application for an initial license unless the department determines that all other licensed narcotic treatment programs maintained by the applicant have corrected all deficiencies and maintained compliance for a minimum of six months.

11839.9. (a) The director shall suspend or revoke any license issued under this article, or deny an application to renew a license or to modify the terms and conditions of a license, upon any violation by the licensee of this article or regulations adopted under this article that presents an imminent danger of death or severe harm to any participant of the program or a member of the general public.

(b) The director may suspend or revoke any license issued under this article, or deny an application to renew a license or to modify the terms and conditions of a license, upon any of the following grounds and in the manner provided in this article:

(1) Violation by the licensee of any laws or regulations of the Substance Abuse and Mental Health Services Administration or the United States Department of Justice, Drug Enforcement Administration, that are applicable to narcotic treatment programs.

(2) Any violation that relates to the operation or maintenance of the program that has an immediate relationship to the physical health, mental health, or safety of the program participants or general public.

(3) Aiding, abetting, or permitting the violation of, or any repeated violation of, any of the provisions set forth in subdivision (a) or in paragraph (1) or (2).

(4) Conduct in the operation of a narcotic treatment program that is inimical to the health, welfare, or safety of an individual in, or receiving services from, the program, the local community, or the people of the State of California.

(5) The conviction of the licensee or any partner, officer, director, 10 percent or greater shareholder, or person employed under the authority of subdivision (c) of Section 2401 of the Business and Professions Code at any time during licensure, of a crime substantially related to the qualifications, functions, or duties of, or relating to, a narcotic treatment program licensee.

(6) The commission by the licensee or any partner, officer, director, 10 percent or greater shareholder, or person employed under the authority of subdivision (c) of Section 2401 of the Business and Professions Code at any time during licensure, of any act involving fraud, dishonesty, or deceit, with the intent to substantially benefit himself or herself or another, or substantially to injure another, and that act is substantially related to the qualifications, functions, or duties of, or relating to, a narcotic treatment program licensee.

(7) Diversion of narcotic drugs. A program's failure to maintain a narcotic drug reconciliation system that accounts for all incoming and outgoing narcotic drugs, as required by departmental or federal regulations, shall create a rebuttable presumption that narcotic drugs are being diverted.

(8) Misrepresentation of any material fact in obtaining the narcotic treatment program license.

(9) Failure to comply with a department order to cease admitting patients or to cease providing patients with take-home dosages of replacement narcotic drugs.

(10) Failure to pay any civil penalty assessed pursuant to paragraph (3) of subdivision (a) of Section 11839.16 where the penalty has become final, unless payment arrangements acceptable to the department have been made.

(11) The suspension or exclusion of the licensee or any partner, officer, director, 10 percent or greater shareholder, or person employed under the authority of subdivision (c) of Section 2401 of the Business and Professions Code from the Medicare, medicaid, or Medi-Cal programs.

(c) Prior to issuing an order pursuant to this section, the director shall ensure continuity of patient care by the program's guarantor or through the transfer of patients to other licensed programs. The director may issue any needed license or amend any other license in an effort to ensure that patient care is not impacted adversely by an order issued pursuant to this section.

11839.10. (a) The department shall cease review of an application for a license if either of the following occur:

(1) An application for a license indicates, or the department determines during the application inspection process, that the applicant was issued a license under this article and the prior license was revoked within the preceding two years. The department shall cease any further review of the application until two years have elapsed from the date of the revocation.

(2) An application for a license indicates, or the department determines during the application inspection process, that the applicant was denied a license or had a license suspended under this article within the preceding year. The department shall cease any further review of the application until one year has elapsed from the date of the denial or suspension.

(b) The department may cease review of an application for license renewal if either of the following occur:

(1) The applicant has not paid the required license fee.

(2) The county in which the licensee is located certifies to the department's satisfaction that there is no need for the narcotic treatment program because of a substantial decline in medically qualified narcotic treatment patients in the licensee's catchment area, or clearly demonstrates that other applicants for licensure can provide more efficient, cost-effective, and sufficient narcotic treatment services in the catchment area, or that the license should not be renewed due to one of the grounds that are enumerated in Section 11839.9.

(c) Upon cessation of review, the license shall be permitted to expire by its own terms. However, if the licensee subsequently submits the items, the absence of which led to the cessation of review, the department may reinstate the license.

(d) Cessation of review shall not constitute a denial of the application for purposes of Sections 11839.8 and 11839.9.

11839.11. A narcotic treatment program license shall automatically terminate if the Substance Abuse and Mental Health Services Administration withdraws or revokes its approval of the program, or if the United States Department of Justice, Drug Enforcement Administration, revokes the program's registration.

11839.12. Except as provided in Section 11839.16, proceedings for the suspension, revocation, or denial of a license or cessation of review

of a renewal license under this article, except where there has been a failure to pay required fees, under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and the department shall have all the powers granted thereby. In the event of conflict between this article and the Administrative Procedure Act, the Administrative Procedure Act shall prevail.

11839.13. (a) The withdrawal of an application for a license after it has been filed with the department shall not, unless the department consents in writing to the withdrawal, deprive the department of its authority to institute or continue a proceeding against the applicant for the denial of the license upon any ground provided by law or to enter an order denying the license upon any ground provided by law.

(b) The suspension, expiration, or forfeiture by operation of law of a license issued by the department, or its suspension, forfeiture, or cancellation by order of the department or by order of a court of law, or its surrender without the written consent of the department, shall not deprive the department of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee upon any ground provided by law.

11839.14. For purposes of this article, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that 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 Section 1203.4 or 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 article, the record of conviction, or a certified copy thereof, shall be conclusive evidence of the conviction.

11839.15. The director may bring an action to enjoin the violation of Section 11839.7, or the violation of a departmental order issued pursuant to Section 11839.16, in the superior court in and for the county in which the violation occurred. Any proceeding under this section shall conform to the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure. The rebuttable presumption set forth in paragraph (7) of subdivision (b) of Section 11839.9 shall be applicable. If the court finds the allegations to be true, it shall issue its order enjoining the narcotic treatment program from continuance of the violation.

11839.16. (a) (1) The director shall, in addition to any other remedy, issue an order that prohibits a narcotic treatment program from admitting new patients or from providing patients with take-home dosages of a narcotic drug if the director determines, pursuant to the compliance inspection procedures set out in paragraph (2) of subdivision (a) of Section 11839.3, that a program has done any of the following:

(A) Failed to provide adequate security measures over its narcotic drug supply as agreed in the program's approved protocol.

(B) Failed to maintain a narcotic drug reconciliation system that accounts for all incoming and outgoing narcotic drugs.

(C) Diverted narcotic drugs.

(D) Repeatedly violated one or more departmental or federal regulations governing narcotic treatment programs, which violations may subject, or may have subjected, a patient to a health or life-endangering situation.

(E) Repeatedly violated one or more departmental or federal regulations governing the provisions of take-home medication.

(F) Operated above combined licensed capacity for maintenance and detoxification programs at a single location.

(2) (A) The order becomes effective when the department serves the program with a copy of the order. The order shall state the deficiencies forming the basis for the order and shall state the corrective action required for the department to vacate the order. The order, as it pertains to subparagraph (F) only, shall automatically be vacated when the department receives the program's written notification that licensed capacity has been achieved. If the order is issued pursuant to subparagraph (A), (B), (C), (D), or (E), the department shall vacate the order when the program submits a corrective action plan that reasonably addresses the deficiency or substantially conforms to the required action set out in the order.

(B) The department shall notify the program that the corrective action plan is accepted or rejected within 10 working days after receipt of the plan. If the department rejects the corrective action plan, it shall detail its reason in writing. The department order is vacated when the department either accepts a corrective action plan and ensures substantial conformity with the required action set out in the order or fails to reject a plan within 10 working days after receipt of the plan.

(3) In addition to any other remedies, a failure of the program to comply with the order of the department under this subdivision shall give rise to a civil penalty of five hundred dollars ($500) a day for each day that the order is violated.

(4) All civil penalties collected by the department under paragraph (3) shall be deposited in the Narcotic Treatment Program Licensing Trust Fund, and shall be used to offset the department's costs associated with

collecting the civil penalties, or associated with any civil, administrative, or criminal action against the program when appropriated for this purpose.

(b) (1) The director may, in addition to any other remedy, issue an order temporarily suspending a narcotic treatment program license prior to any administrative hearing for the reasons stated in subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (a) when the department determines pursuant to the compliance inspection procedures set out in paragraph (2) of subdivision (a) of Section 11839.3, that the action is necessary to protect patients of the program from any substantial threat to their health or safety, or to protect the health or safety of the local community or the people of the State of California. Prior to issuing the order, the director shall ensure continuity of patient care by the program's guarantor or through the transfer of patients to other licensed programs. The director may issue any needed license or amend any other license in his or her effort to assure that patient care is not impacted adversely by the suspension order.

(2) The director shall notify the licensee of the temporary suspension and the effective date thereof and at the same time shall serve the licensee with an accusation. Upon receipt of a notice of defense to the accusation by the licensee, the director shall, within 15 days, set the matter for hearing, and the hearing shall be held as soon as possible, but not later than 20 days, exclusive of weekends, after receipt of the notice. The temporary suspension shall remain in effect until the hearing is completed and the director has made a final determination on the merits. However, the temporary suspension shall be deemed vacated if the director fails to make a final determination on the merits within 20 days after the original hearing has been completed. Failure to cease operating after the department issues an order temporarily suspending the license shall constitute an additional ground for license revocation and shall constitute a violation of Section 11839.8. The department shall suspend the program's license if the hearing outcome is adverse to the license. The department shall notify the program of the license suspension within five days of the director's final decision.

(c) A program may, at any time after it is served with an order, petition the superior court to review the department's issuance of an order or rejection of a corrective action plan.

11839.17. (a) In cases where a program is closing and the licensed entity that has agreed to assume temporary operation of the closing program is unable to do so, the department may assume temporary operation of the closing program or designate another licensed entity willing to do so. In cases where the licensed entity that has agreed to assume temporary operation is the subject of a pending licensing action or order issued pursuant to Section 11839.16, the department may issue

an order prohibiting the entity from assuming temporary operation and may assume temporary operation of the closing program or designate another licensed entity willing to do so. This section shall not be construed to require the department or any other licensed entity to assume any of the closing programs' financial obligations.

(b) For purposes of this section, ''temporary'' means no more than 90 days.

11839.18. Any licensee may petition the director for waiver of licensure fees or late payment penalties for the current fiscal year based upon financial hardship. Prior to the granting of relief, the licensee shall demonstrate hardship by production of appropriate financial records. The director may, in his or her discretion, grant all or part of the relief sought, but shall consider the reasonableness of the relief in light of the other expenditures undertaken by the licensee, giving particular scrutiny to the licensee's own profits, earnings, or other compensation, and expenses such as interest, mortgage, or loan payments, as well as noncash expenses such as accruals and depreciation.

11839.19. (a) The department shall not license the establishment of a narcotic treatment program without a written application by the treatment facility that meets evaluative criteria required by the department.

(b) The department shall not require disclosure of the identity of patients or former patients or of any records containing identifying information except as provided in Section 11845.5.

11839.20. (a) It is the intent of the Legislature in licensing narcotic treatment programs to provide a means whereby the patient may be rehabilitated and will no longer need to support a dependency on narcotics. It is, therefore, the intent of the Legislature that each narcotic treatment program shall have a strong rehabilitative element, including, but not limited to, individual and group therapy, counseling, vocational guidance, and job and education counseling. The Legislature declares the ultimate goal of all narcotic treatment programs shall be to aid the patient in altering his or her lifestyle and eventually to eliminate all dependency on drugs.

(b) The department shall adopt any regulations necessary to ensure that every program is making a sustained effort to end the drug dependency of the patients.

11839.21. The State Department of Health Services shall establish criteria for acceptable performance from those laboratories performing urinalysis or other body fluid analysis and shall not permit utilization of laboratories unable to meet an acceptable level of performance. The results of any performance evaluation of any laboratory shall immediately be made available to the local programs upon request. Nothing in this section shall prohibit body fluid analysis to be performed

by a licensed narcotic treatment program upon approval of the State Department of Health Services.

11839.22. The state department shall require a system to detect multiple registration by narcotic clients.

Article 2. Narcotic Treatment Program Body Fluids Testing

11839.23. The State Department of Health Services shall adopt and publish rules and regulations to be used in approving and governing the operation of laboratories engaging in the performance of tests referred to in Section 11839.24, including, but not limited to, the qualifications of the laboratory employees who perform the tests, which qualifications the department determines are reasonably necessary to ensure the competence of the laboratories and employees to prepare, analyze, and report the results of the tests.

11839.24. Substance abuse testing for narcotic treatment programs operating in the state shall be performed only by a laboratory approved and licensed by the State Department of Health Services for the performance of those tests.

11839.25. Each laboratory in this state that performs the test referred to in Section 11839.24 shall be licensed by the State Director of Health Services. The laboratory, other than a laboratory operated by the state, county, city, city and county, or other public agency, or a clinical laboratory licensed pursuant to subdivision (f) of Section 1300 of the Business and Professions Code, shall, upon application for licensing, pay a fee to the State Department of Health Services in an amount to be determined by that department, which fee will reimburse the department for the costs incurred by the department in the issuance and renewal of the licenses. On or before July 1 of each year thereafter, the laboratory shall pay to the State Department of Health Services a fee, determined by the department, for the renewal of its license.

11839.26. The State Department of Health Services shall enforce this article and the rules and regulations adopted pursuant to this article by the department.

11839.27. The State Department of Health Services shall annually publish a list of approved and licensed laboratories engaging in the performance of tests referred to in Section 11839.24.

11839.28. Every laboratory that has been approved and for which a license has been issued shall be periodically inspected by a duly authorized representative of the State Department of Health Services. Reports of this inspection shall be prepared by the representative conducting it upon forms prepared and furnished by the State Department of Health Services and shall be filed with that department.

11839.29. Any license issued pursuant to Section 11839.25 may be suspended or revoked by the State Director of Health Services. The State Director of Health Services may refuse to issue a license to any applicant. Any proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the State Director of Health Services shall have the powers and duties granted therein.

11839.30. The State Director of Health Services may deny a license if any of the following apply to the applicant, or any partner, officer, or director thereof:

(a) The person fails to meet the qualifications established by the State Department of Health Services pursuant to this chapter for the issuance of the license applied for.

(b) The person was previously the holder of a license issued under this chapter, which license has been revoked and never reissued or was suspended and the terms of the suspension have not been fulfilled.

(c) The person has committed any act involving dishonesty, fraud, or deceit, whereby another was injured or whereby the applicant has benefited.

11839.31. The State Director of Health Services may suspend, revoke, or take other disciplinary action against a licensee as provided in this chapter, if the licensee or any partner, officer, or director thereof does any of the following:

(a) Violates any of the regulations promulgated by the State Department of Health Services pursuant to this article.

(b) Commits any act of dishonesty, fraud or deceit, whereby another is injured or whereby the licensee benefited.

(c) Misrepresents any material fact in obtaining a license.

11839.32. The State Director of Health Services may take disciplinary action against any licensee after a hearing as provided in this article by any of the following:

(a) Imposing probation upon terms and conditions to be set forth by the State Director of Health Services.

(b) Suspending the license.

(c) Revoking the license.

11839.33. All accusations against licensees shall be filed within three years after the act or omission alleged as the ground for disciplinary action, except that with respect to an accusation alleging a violation of subdivision (c) of Section 11839.31, the accusation shall be filed within two years after the discovery by the State Department of Health Services of the alleged facts constituting the fraud or misrepresentation prohibited by that section.

11839.34. After suspension or revocation of the license upon any of the grounds set forth in this article, the license shall not be reinstated or

reissued within a period of one year after the effective date of suspension or revocation. After one year after the effective date of the suspension or revocation, the State Department of Health Services may reinstate the license upon proof of compliance by the applicant with all provisions of the decision as to reinstatement.

SEC. 114.5. Section 11839.20 is added to the Health and Safety Code, to read:

11839.20. (a) It is the intent of the Legislature in licensing narcotic treatment programs that use prescription medications to provide a means whereby the patient may be rehabilitated and will no longer need to support a dependency on narcotics.

(b) It is further the intent of the Legislature that each narcotic treatment program shall have a strong rehabilitative element, including, but not limited to, individual and group therapy, counseling, vocational guidance, and job and education counseling.

(c) The Legislature finds and declares that the ultimate goal of all narcotic treatment programs shall be to aid the patient in altering his or her lifestyle and eventually to eliminate dependency on all the improper use of legal drugs or the abuse of illicit drugs.

(d) The department shall adopt any regulations necessary to ensure that every program is making a sustained effort to end the illicit drug dependency of the patients' improper use of legal drugs or the abuse of illicit drugs.

SEC. 115. The heading of Chapter 10 (commencing with Section 11840) of Part 2 of Division 10.5 of the Health and Safety Code is amended and renumbered to read:

CHAPTER 11. GENERAL FINANCIAL PROVISIONS

SEC. 116. Section 11840 of the Health and Safety Code is amended to read:

11840. Each county shall provide matching funds for programs and services provided by the county under this part, except as follows:

(a) State hospital alcohol and other drug programs shall be funded on the basis of 85 percent state funds and 15 percent county funds.

(b) The cost of state hospital services in counties with a population of 100,000 or less shall be financed on the basis of 90 percent state funds and 10 percent county funds.

SEC. 117. Section 11840.1 of the Health and Safety Code is amended to read:

11840.1. (a) Every fiscal year, 10 percent county matching funds shall be required for support of programs and services provided under this part by a county of more than 100,000 population.

(b) Notwithstanding any other provision of law, no county matching funds shall be required pursuant to this section for funding received for the purposes of funding existing residential perinatal treatment programs that were begun through federal Center for Substance Abuse Treatment grants but whose grants expired on or before October 1, 2000. For counties in which there is such a provider, the department shall include language in those counties' allocation letters that indicates the amount of the allocation designated for the provider during the fiscal year. This exemption shall only apply to the state funding provided to replace the expiring federal grants, and shall not apply to any subsequent program expansions.

(c) The department may reallocate any funds that are not matched by counties within 30 days after notification of the Joint Legislative Budget Committee using a letter as prescribed in Section 28.00 of the Budget Act. However, the reallocated funds shall not be counted into the base allocation.

SEC. 118. Section 11841 of the Health and Safety Code is amended to read:

11841. (a) It is the intent of the Legislature that all programs funded under this part shall be partially self-supporting by raising revenues in addition to the funds allocated by the department. These revenues may include, but are not limited to, fees for services, private contributions, grants, or other governmental funds. These revenues shall be used in support of additional alcohol and other drug services or facilities.

(b) Each program funded under this part, which program provides alcohol and other drug services to individuals and their families, shall assess fees to participants in the programs. The fee requirement shall not apply to prevention and early intervention activities.

(c) Each county shall identify in its annual cost report the types and amounts of revenues raised by all the providers of services funded under this part.

SEC. 119. Chapter 12 (commencing with Section 11842) is added to Part 2 of Division 10.5 of the Health and Safety Code, to read:

CHAPTER 12. REGISTRATION OF NARCOTIC, ALCOHOL, AND OTHER DRUG ABUSE PROGRAMS

11842. As used in this chapter, ''narcotic and drug abuse program'' means any program that provides any service of care, treatment, rehabilitation, counseling, vocational training, self-improvement classes or courses, replacement narcotic therapy in maintenance or detoxification treatment, or other medication services for detoxification and treatment, and any other services that are provided either public or private, whether free of charge or for compensation, which services are

intended in any way to alleviate the problems of narcotic addiction or habituation or drug abuse addiction or habituation or any problems in whole or in part related to the problem of narcotics addiction or drug abuse, or any combination of these problems.

11842.5. As used in this chapter, an alcohol and other drug abuse program includes, but is not limited to:

(a) Residential programs that provide a residential setting and services such as detoxification, counseling, care, treatment, and rehabilitation in a live-in facility.

(b) Drop-in centers that are established for the purpose of providing counseling, advice, or a social setting for one or more persons who are attempting to understand, alleviate, or cope with their problems of alcohol and other drug abuse.

(c) Crisis lines that provide a telephone answering service that provides, in whole or in part, crisis intervention, counseling, or referral, or that is a source of general drug abuse information.

(d) Free clinics that are established for the purpose, either in whole or in part, of providing any medical or dental care, social services, or treatment, or referral to these services for those persons recognized as having a problem of narcotics addiction or drug abuse. Free clinics include primary care clinics licensed under paragraph (2) of subdivision (a) of Section 1204.

(e) Detoxification centers that are established for the purpose of detoxification from drugs, regardless of whether or not narcotics, restricted dangerous drugs, or other medications are administered in the detoxification and whether detoxification takes place in a live-in facility or on an outpatient basis.

(f) Narcotic treatment programs, whether inpatient or outpatient, that offer replacement narcotic therapy and maintenance, detoxification, or other services, in conjunction with that replacement narcotic therapy.

(g) Chemical dependency programs, whether inpatient or outpatient and whether in a hospital or nonhospital setting, that offer a set program of treatment and rehabilitation for persons with a chemical dependency that is not primarily an alcohol dependency.

(h) Alcohol and other drug prevention programs that promote positive action that changes the conditions under which the drug-taking behaviors to be prevented are most likely to occur and a proactive and deliberate process that promotes health and well-being by empowering people and communities with resources necessary to confront complex and stressful life conditions.

(i) Nonspecific drug programs that have not been specifically mentioned in subdivisions (a) to (h), inclusive, but that provide or offer to provide, in whole or in part, for counseling, therapy, referral, advice, care, treatment, or rehabilitation as a service to those persons suffering

from alcohol and other drug addiction, or alcohol and other drug abuse related problems that are either physiological or psychological in nature.

11843. The county shall establish and maintain a registry of all narcotic and drug abuse programs and alcohol and other drug abuse programs within the county in order to promote a coordination of effort in the county.

11843.5. Each narcotic and drug abuse program and alcohol and other drug abuse program in a county shall register annually with the county alcohol and drug program administrator by July 1 or within 30 days after being established.

11844. Registration under this chapter shall include registration of all of the following information concerning the particular narcotic and drug abuse program or alcohol and other drug abuse program registering:

(a) A description of the services, programs, or activities provided by the narcotic and drug abuse program and the types of patients served.

(b) The address of each facility at which the services, programs, or activities are furnished.

(c) The names and addresses of the persons or agencies responsible for the direction and operation of the narcotic and drug abuse program or alcohol and other drug abuse program.

11844.5. Registration under this part does not constitute the approval or endorsement of the narcotic and drug abuse program or alcohol and other drug abuse program by any state or county officer, employee, or agency.

11845. For the purpose of this chapter, registration shall not be required for those programs that provide alcohol and other drug abuse education in public or private schools as a matter of and in conjunction with a general education of students. This chapter does not require registration of law enforcement agencies that provide alcohol and other drug abuse education in the course of their normal performance of duties. Nothing in this chapter shall prohibit registration of these programs of education or law enforcement if the law enforcement and education agencies so desire.

11845.5. (a) The identity and records of the identity, diagnosis, prognosis, or treatment of any patient, which identity and records are maintained in connection with the performance of any alcohol and other drug abuse treatment or prevention effort or function conducted, regulated, or directly or indirectly assisted by the department shall, except as provided in subdivision (c), be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under subdivision (b).

(b) The content of any records referred to in subdivision (a) may be disclosed in accordance with the prior written consent of the client with

respect to whom the record is maintained, but only to the extent, under the circumstances, and for the purposes as clearly stated in the release of information signed by the client.

(c) Whether or not the client, with respect to whom any given record referred to in subdivision (a) is maintained, gives his or her written consent, the content of the record may be disclosed as follows:

(1) In communications between qualified professional persons employed by the treatment or prevention program in the provision of service.

(2) To qualified medical persons not employed by the treatment program to the extent necessary to meet a bona fide medical emergency.

(3) To qualified personnel for the purpose of conducting scientific research, management audits, financial and compliance audits, or program evaluation, but the personnel may not identify, directly or indirectly, any individual client in any report of the research, audit, or evaluation, or otherwise disclose patient identities in any manner. For purposes of this paragraph, the term ''qualified personnel'' means persons whose training and experience are appropriate to the nature and level of work in which they are engaged, and who, when working as part of an organization, are performing that work with adequate administrative safeguards against unauthorized disclosures.

(4) If the recipient of services is a minor, ward, or conservatee, and his or her parent, guardian, or conservator designates, in writing, persons to whom his or her identity in records or information may be disclosed, except that nothing in this section shall be construed to compel a physician and surgeon, psychologist, social worker, nurse, attorney, or other professional person to reveal information that has been given to him or her in confidence by members of the client's family.

(5) If authorized by a court of competent jurisdiction granted after application showing probable cause therefor, as provided in subdivision (c) of Section 1524 of the Penal Code.

(d) Except as authorized by a court order granted under paragraph (5) of subdivision (c), no record referred to in subdivision (a) may be used to initiate or substantiate any criminal charges against a client or to conduct any investigation of a client.

(e) The prohibitions of this section shall continue to apply to records concerning any individual who has been a client, irrespective of whether he or she ceases to be a client.

SEC. 120. Chapter 13 (commencing with Section 11847) is added to Part 2 of Division 10.5 of the Health and Safety Code, to read:

CHAPTER 13. NARCOTIC AND ALCOHOL AND OTHER DRUG ABUSE PROGRAMS

11847. The Legislature hereby finds and declares that it is essential to the health and welfare of the people of this state that action be taken by state government to effectively and economically utilize federal and state funds for narcotic and alcohol and other drug abuse prevention, care, treatment, and rehabilitation services. To achieve this, it is necessary that all of the following occur:

(a) Existing fragmented, uncoordinated, and duplicative narcotic and alcohol and other drug abuse programs be molded into a comprehensive and integrated statewide program for the prevention of narcotic and alcohol and other drug abuse and for the care, treatment, and rehabilitation of narcotic addicts and alcohol and other drug users.

(b) Responsibility and authority for planning programs and activities for prevention, care, treatment, and rehabilitation of narcotic addicts be concentrated in the department. It is the intent of the Legislature to assign responsibility and grant authority for planning narcotic and alcoholic and other drug abuse prevention, care, treatment, and rehabilitation programs to the department whose functions shall be subject to periodic review by the Legislature and appropriate federal agencies.

(c) The department succeeds to, and is vested with, all the duties, powers, purposes, responsibilities, and jurisdiction with regard to substance abuse formerly vested in the State Department of Health.

11847.1. The department shall consult with state and local health planning bodies and encourage and promote effective use of facilities, resources, and funds in the development of integrated, comprehensive local programs for the prevention, care, treatment, and rehabilitation of narcotic and alcohol and other drug abuse.

11847.2. Any community alcohol and other drug abuse service may by contract furnish community alcohol and other drug abuse services to any other county.

11847.3. The department shall, within available resources, consult with federal, state and local agencies involved in the provision and delivery of services of prevention, care, treatment, and rehabilitation of alcohol and other drug abusers.

11847.4. The department shall provide technical assistance, guidance, and information to local governments and state agencies with respect to the creation and implementation of programs and procedures for dealing effectively with alcohol and other drug abuse prevention, care, treatment, and rehabilitation. The department may charge a fee for these services.

11847.5. The department shall establish goals and priorities for all state agencies providing narcotic and alcohol and other drug abuse

services. All state governmental units operating alcohol and other drug programs or administering or subventing state or federal funds for alcohol and other drug programs shall annually set their program priorities and allocate funds in coordination with the department.

11847.6. The department shall, in the same manner and subject to the same conditions as other state agencies, develop and submit annually to the Department of Finance a program budget.

11848. (a) (1) Alcohol and other drug abuse services allowable under the Medi-Cal program (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code) as approved by the department and the State Department of Health Services as qualified for financial participation under Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) shall be funded, notwithstanding Sections 11817.3, 11840, and 11840.1, at 100 percent of the state and federal cost by using the county's existing state General Fund allocation, as appropriated in the department's annual budget, to first fund the state's portion of the allowable costs.

(2) For each fiscal year there shall be a separate state General Fund appropriation in Item 4200-101-0001 of the department's annual budget for non-Drug Medi-Cal nonperinatal services. There shall also be an appropriation in Item 4200-102-0001 of the department's annual budget for Drug Medi-Cal nonperinatal services.

(3) For each fiscal year there shall be a separate state General Fund appropriation in Item 4200-103-0001 of the department's annual budget for Drug Medi-Cal perinatal services. Non-Drug Medi-Cal perinatal services shall be appropriated in Item 4200-104-0001 of the department's annual budget.

(4) The department shall maintain a contingency reserve of unexpended state General Funds appropriated for Drug Medi-Cal allowable services pursuant to subdivision (e) of Section 14132.90 of the Welfare and Institutions Code.

(5) Unexpended moneys appropriated from the state General Fund for Drug Medi-Cal expenditures may be transferred for use by counties for non-Drug Medi-Cal expenditures. Unexpended moneys appropriated for Drug Medi-Cal expenditures may not be used to provide matching funds for federal financial participation.

(b) The intent of the Legislature in enacting this section is to provide a funding source for counties to establish alcohol and other drug abuse services without any increased costs to the state General Fund and at the same time not to require the county to provide additional matching funds in order for the county to use a portion of its state share of local drug programs Medi-Cal funds now available to counties without a required 10-percent match.

11848.5. (a) Once the negotiated rate has been approved by the county, all participating governmental funding sources, except the Medi-Cal program (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code), shall be bound to that rate as the cost of providing all or part of the total county alcohol and other drug program as described in the county plan for each fiscal year to the extent that the governmental funding sources participate in funding the county alcohol and other drug program. Where the State Department of Health Services adopts regulations for determining reimbursement of alcohol and other drug program services formerly allowable under the Short-Doyle program and reimbursed under the Medi-Cal Act, those regulations shall be controlling only as to the rates for reimbursement of alcohol and other drug program services allowable under the Medi-Cal program and rendered to Medi-Cal beneficiaries. Providers under this section shall report to the department and the county any information required by the department in accordance with the procedures established by the director of the department.

(b) The Legislature recognizes that alcohol and other drug abuse services differ from mental health services provided through the State Department of Mental Health and therefore should not necessarily be bound by rate determination methodology used for reimbursement of those services formerly provided under the Short-Doyle program and reimbursed under the Medi-Cal Act. The department and the State Department of Health Services shall, pursuant to Section 14021.5 of the Welfare and Institutions Code, develop a ratesetting methodology suitable for alcohol and other drug services reimbursed under the Medi-Cal program using an all-inclusive rate encompassing the costs of reimbursable service functions provided by each authorized modality.

11849. Expenditures incurred pursuant to this part shall be in accordance with the regulations of the director and shall be subject to payment whether incurred by direct or joint operation of the facilities and services, by provisions therefor through contract, or by other arrangement pursuant to the provisions of this chapter. The director may make investigations and audits of the expenditures as he or she may deem necessary.

11849.5. (a) In determining the amounts that may be paid, fees paid by persons receiving services or fees paid on behalf of those persons by the federal government, by the California Medical Assistance Program set forth in Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code, and by other public or private sources, shall be deducted from the costs of providing services. Whenever feasible, alcohol and other drug abusing persons who are eligible for alcohol and other drug abuse services under the California

Medical Assistance Program shall be treated in a facility approved for reimbursement in that program.

(b) General unrestricted or undesignated private charitable donations and contributions made to charitable or nonprofit organizations shall not be considered as ''fees paid by persons'' or ''fees paid on behalf of such persons'' under this section and the contributions shall not be applied in determining the amounts to be paid. The unrestricted contributions shall not be used in part or in whole to defray the costs or the allocated costs of the California Medical Assistance Program.

11850. The department shall coordinate all narcotic and alcohol and other drug abuse services and related programs conducted by state agencies with the federal government, and shall ensure that there is no duplication of those programs among state agencies and that all agreements, contracts, plans, and programs proposed to be submitted by any state agency, other than the Regents of the University of California, to the federal government in relation to narcotic and alcohol and other drug abuse related problems shall first be submitted to the state department for review and approval.

11850.5. The department may require state agencies to contract with it for services to carry out the provisions of this division.

11851. The department may accept and expend grants, gifts, and legacies of money, and, with the consent of the Department of Finance, accept, manage, and expend grants, gifts, and legacies of other properties in furtherance of the purposes of this division.

11851.5. In addition to those expenditures authorized under Section 11851, expenditures subject to payment shall include expenses incurred by members of the local advisory board on alcohol and other drug programs in providing alcohol and other drug program services through the implementation of executed negotiated net amount contracts, and Drug Medi-Cal contracts, or approved county plans. Payment shall be made of actual and necessary expenses of members incurred incident to the performance of their official duties and may include travel, lodging, and meals while on official business.

11852. Whenever a county receives funds under a grant program for alcohol and other drug abuse services, as well as under the county plan, negotiated net amount contract, and Drug Medi-Cal contract, whichever is applicable, from either the federal or state government, or from any other grantor, public or private, and fails to include that grant program in the county plan, negotiated net amount contract, and Drug Medi-Cal contract, whichever is applicable, and alcohol and other drug program budget, the director shall not thereafter approve any, or provide, advance payment claims submitted by the county for state reimbursement under this part unless and until the county plan, negotiated net amount contract, and Drug Medi-Cal contract, whichever is applicable, and alcohol and

other drug program budget has been reviewed to include that grant program and the revised county plan, negotiated net amount contract, and Drug Medi-Cal contract, whichever is applicable, and budget is approved by the director.

11852.5. (a) Charges shall be made for services rendered to each person under a county plan in accordance with this section. Charges for the care and treatment of each client receiving service under a county plan, negotiated net amount contract, and Drug Medi-Cal contract, whichever is applicable, shall not exceed the actual cost thereof as determined by the director in accordance with standard accounting practices. The fee requirement shall not apply to prevention and early intervention services. The director is not prohibited from including the amount of expenditures for capital outlay or the interest thereon, or both, in his or her determination of actual cost. The responsibility of a client, his or her estate, or his or her responsible relatives to pay the charges shall be determined in accordance with this section.

(b) Each county shall determine the liability of clients rendered services under a county plan, negotiated net amount contract, and Drug Medi-Cal contract, whichever is applicable, and of their estates or responsible relatives, to pay the charges according to ability to pay. Each county shall collect the charges. The county shall establish and maintain policies and procedures for making the determinations of liability and collections, by collecting third-party payments and from other sources to the maximum extent practicable. The written criteria shall be a public record and shall be made available to the department or any individual. Fees collected shall be retained at the local level and be applied toward the purchase of additional drug services.

(c) Services shall not be denied because of a client's ability or inability to pay. County-operated and contract providers of treatment services shall set and collect fees using methods approved by the county alcohol and drug program administrator. All approved fee systems shall conform to all of the following guidelines and criteria:

(1) The fee system used shall be equitable.

(2) The fee charged shall not exceed actual cost.

(3) Systems used shall consider the client's income and expenses.

(4) Each provider fee system shall be approved by the county alcohol and drug program administrator. A description of each approved system shall be on file in the county board office.

(d) To ensure an audit trail, the county or provider, or both, shall maintain all of the following records:

(1) Fee assessment schedules and collection records.

(2) Documents in each client's file showing client's income and expenses, and how each was considered in determining fees.

(e) Each county shall furnish the director with a cost report of information the director shall require to enable the director to maintain a cost-reporting system of the costs of alcohol and other drug program services in the county funded in whole or in part by state-administered funds. The cost-reporting system established pursuant to this section shall supersede the requirements of paragraph (2) of subdivision (b) of Section 16366.7 of the Government Code for a quarterly fiscal reporting system. An annual cost report, for the fiscal year ending June 30, shall be submitted to the department by November 1.

(f) The Legislature recognizes that alcohol and other drug programs may provide a variety of services described in this part, which services will vary depending on the needs of the communities that the programs serve. In devising a system to assure that a county has expended its funds pursuant to any applicable executed negotiated net amount contract, Drug Medi-Cal contract, and approved county plan, including the budget portions of the plan, the department shall take into account the flexibility that a county has in the provision of services and the changing nature of alcohol and other drug programs in responding to the community's needs.

(g) The department shall maintain a reporting system to assure that counties have budgeted and expended their funds pursuant to their executed negotiated net amount contracts, Drug Medi-Cal contracts, and approved county plans, whichever is applicable.

11853. Counties are encouraged to contract with providers for the provision of services funded through the county's executed negotiated net amount contract, Drug Medi-Cal contract, and approved county plan, whichever is applicable. Counties shall comply with the regulations of the department for the management of contracts with community organizations, as contained in the county administration and program services regulations as developed by the department.

11853.5. The department shall review each county's executed negotiated net amount contract, Drug Medi-Cal contract, and approved county plan, whichever is applicable, to determine that it complies with the requirements of this part and with the standards adopted under this part.

11854. The department shall devise and implement, in consultation with the counties, a program reporting method to evidence county compliance with this part. Until that date, the department shall ensure the payment and cost-reporting system does not impair the implementation of this part.

11854.5. Each county may establish standards that meet or exceed state standards for the treatment and operation of all county-operated and county-contracted alcohol and other drug treatment facilities and services, hereafter referred to as a ''quality assurance system.'' A

''quality assurance system'' is a systematic approach for the evaluation of the quality of care, which approach is designed to promote and maintain efficient, effective, and appropriate alcohol and other drug treatment services.

11855. Payments or advances of funds to cities, counties, cities and counties, or other state agencies, which funds are properly chargeable to appropriations to the department, may be made by a Controller's warrant drawn against state funds appropriated to the department or federal funds administered by the department. No more than one-twelfth of the amount to be allocated to a given entity for the fiscal year may be advanced each month.

11855.5. (a) The department may charge a reasonable fee for the certification or renewal certification of a program that voluntarily requests the certification. The fee shall be set at a level sufficient to cover administrative costs of the program certification process incurred by the department. In calculating the administrative costs the department shall include staff salaries and benefits, related travel costs, and state operational and administrative costs.

(b) The department may contract with private individuals or agencies to provide technical assistance and training to qualify programs for state certification. The department may charge a fee for these services.

11856. The department shall encourage the development of educational courses that provide core knowledge concerning alcohol and other drug problems and programs to personnel working within alcohol and other drug programs.

11856.5. The department shall conduct onsite monitoring and reviews of individual county-operated alcohol and other drug programs and alcohol and other drug program administration with emphasis on the review of county administration. The administrative reviews shall include sampling of all services, including those provided by county contract providers.

SEC. 121. The heading of Part 3 (commencing with Section 11860) of Division 10.5 of the Health and Safety Code is amended to read:

PART 3. STATE GOVERNMENT'S ROLE TO ALLEVIATE PROBLEMS RELATED TO THE USE AND ABUSE OF ALCOHOL AND OTHER DRUGS

SEC. 122. Section 11860 of the Health and Safety Code is amended to read:

11860. The state department, with the approval of the Secretary of California Health and Human Services Agency, may contract with any public or private agency for the performance of any of the functions

vested in the department by this chapter. Any state department is authorized to enter into a contract described in this section.

SEC. 123. Section 11864 of the Health and Safety Code is repealed.

SEC. 124. Article 2 (commencing with Section 11865) of Chapter 1 of Part 3 of Division 10.5 of the Health and Safety Code is repealed.

SEC. 125. Article 3 (commencing with Section 11875) of Chapter 1 of Part 3 of Division 10.5 of the Health and Safety Code is repealed.

SEC. 125.5. Article 3 (commencing with Section 11875) is added to Chapter 1 of Part 3 of Division 10.5 of the Health and Safety Code, to read:

Article 3. Narcotic Treatment Programs

11875. The following controlled substances are authorized for use in replacement narcotic therapy by licensed narcotic treatment programs:

(a) Methadone.

(b) Levoalphacetylmethadol (LAAM) as specified in paragraph (10) of subdivision (c) of Section 11055.

(c) Buprenorphine products or combination products approved by the federal Food and Drug Administration for maintenance or detoxification of opoid dependence.

(d) Any other federally approved controlled substances used for the purpose of narcotic replacement treatment.

11876. The department shall inspect programs dispensing controlled substances described in subdivision (c) of Section 11875 to ensure that the programs are operating in compliance with applicable federal statutes and regulations, including the provisions of Part 8 of Title 42 of the Code of Federal Regulations.

SEC. 126. Article 4 (commencing with Section 11885) of Chapter 1 of Part 3 of Division 10.5 of the Health and Safety Code is repealed.

SEC. 127. The heading of Chapter 2 (commencing with Section 11960) of Part 3 of Division 10.5 of the Health and Safety Code is amended to read:

CHAPTER 2. COMMUNITY ALCOHOL AND OTHER DRUG ABUSE CONTROL

SEC. 128. Article 1 (commencing with Section 11960) of Chapter 2 of Part 3 of Division 10.5 of the Health and Safety Code is repealed.

SEC. 129. Article 2 (commencing with Section 11965) of Chapter 2 of Part 3 of Division 10.5 of the Health and Safety Code is repealed.

SEC. 131. The heading of Article 4 (commencing with Section 11970.1) of Chapter 2 of Part 3 of Division 10.5 of the Health and Safety Code is amended and renumbered to read:

Article 2. Comprehensive Drug Court Implementation Act of 1999

SEC. 132. The heading of Article 5 (commencing with Section 11970.45) of Chapter 2 of Part 3 of Division 10.5 of the Health and Safety Code is amended and renumbered to read:

Article 3. Drug Court Partnership Act of 2002

SEC. 133. Chapter 3 (commencing with Section 11970.5) of Part 3 of Division 10.5 of the Health and Safety Code is repealed.

SEC. 134. Chapter 4 (commencing with Section 11980) of Part 3 of Division 10.5 of the Health and Safety Code is repealed.

SEC. 135. Section 114.5 of this bill shall only become operative if (1) both this bill and Assembly Bill 2136 are enacted and become effective on or before January 1, 2005, (2) this bill adds Section 11839.20 to the Health and Safety Code and repeals Section 11880 of the Health and Safety Code, Assembly Bill 2136 amends Section 11880 of the Health and Safety Code, and (3) this bill is enacted after Assembly Bill 2136, in which case Section 11839.20 of the Health and Safety Code, as contained in Section 114 of this bill shall not become operative.

CHAPTER 863

An act to amend Section 25214.10 of, and to add Sections 25214.10.1 and 25214.10.2 to, the Health and Safety Code, and to amend Sections 42463, 42464, 42465, 42465.1, 42465.2, 42465.3, 42475, 42475.2, 42476, 42476.5, 42477, 42478, 42479, and 42485 of, to add Sections 42464.4, 42464.6, 42846, and 48000 to, to repeal Section 42475.1 of, and to repeal and add Section 42464.2 of, the Public Resources Code, relating to solid waste, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 2004.]

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

SECTION 1. Section 25214.10 of the Health and Safety Code is amended to read:

25214.10. (a) For purposes of this section, "electronic device" has the same meaning as a "covered electronic device," as defined in Section 42463 of the Public Resources Code.

(b) The department shall adopt regulations, in accordance with this section, that prohibit an electronic device from being sold or offered for sale in this state if the electronic device is prohibited from being sold or offered for sale in the European Union on and after its date of manufacture, to the extent that Directive 2002/95/EC, adopted by the European Parliament and the Council of the European Union on January 27, 2003, and as amended thereafter by the Commission of European Communities, prohibits that sale due to the presence of certain heavy metals.

(c) The regulations adopted pursuant to subdivision (b) shall take effect January 1, 2007, or on or after the date Directive 2002/95/EC, adopted by the European Parliament and the Council of the European Union on January 27, 2003, takes effect, whichever date is later.

(d) The department shall exclude, from the regulations adopted pursuant to this section, the sale of an electronic device that contains a substance that is used to comply with the consumer, health, or safety requirements that are required by the Underwriters Laboratories, the federal government, or the state.

(e) In adopting regulations pursuant to this section, the department may not require the manufacture or sale of an electronic device that is different than, or otherwise not prohibited by, the European Union under Directive 2002/95/EC, adopted by the European Parliament and the Council of the European Union on January 27, 2003.

(f) (1) The department may not adopt any regulations pursuant to this section that impose any requirements or conditions that are in addition to, or more stringent than, the requirements and conditions expressly authorized by this section.

(2) In complying with this subdivision, the department shall use, in addition to any other information deemed relevant by the department, the published decisions of the Technical Adaptation Committee and European Union member states that interpret the requirements of Directive 2002/95/EC.

SEC. 2. Section 25214.10.1 is added to the Health and Safety Code, to read:

25214.10.1. (a) For purposes of this section, the following definitions shall apply:

(1) "Electronic device" means a video display device, as defined in subdivision (t) of Section 42463 of the Public Resources Code, with a screen size of greater than four inches.

(2) ''Covered electronic device,'' ''manufacturer,'' and ''retailer'' have the same meaning as those terms are defined in Section 42463 of the Public Resources Code.

(b) The department shall adopt regulations that identify electronic devices that the department determines are presumed to be, when discarded, a hazardous waste pursuant to this chapter.

(c) (1) Except as provided in subdivision (e), a manufacturer of an electronic device that is identified in the regulations adopted by the department shall send a notice in accordance with the schedule specified in subparagraph (A) or (B), as applicable, of paragraph (3), to any retailer that sells that electronic device manufactured by the manufacturer. The notice shall identify the electronic device, and shall inform the retailer that the electronic device is a covered electronic device and is subject to a fee in accordance with subdivision (d).

(2) A manufacturer subject to this subdivision shall also send a copy of the notice to the State Board of Equalization.

(3) The notice required by this subdivision shall be sent in accordance with the following schedule:

(A) On or before October 1, 2004, the manufacturer shall send a notice covering any electronic device manufactured by that manufacturer that is identified in the regulations adopted by the department on or before July 1, 2004, that identify the electronic devices that the department determines are presumed to be, when discarded, a hazardous waste pursuant to this chapter.

(B) On or before April 1, 2005, and on or before every April 1 of each year thereafter, the manufacturer shall send a notice covering any electronic device manufactured by that manufacturer identified in the regulations adopted by the department pursuant to subdivision (b) on or before December 31 of the prior year.

(4) If a retailer sells a refurbished covered electronic device, the manufacturer is required to comply with the notice requirement of this subdivision only if the manufacturer directly supplies the refurbished covered electronic device to the retailer.

(d) (1) Except as provided in subdivision (e), a covered electronic device that is identified in the regulations adopted, on or before July 1, 2004, by the department, that identify electronic devices that the department determines are presumed to be, when discarded, a hazardous waste pursuant to this chapter shall, on and after January 1, 2005, be subject to Chapter 8.5 (commencing with Section 42460) of Part 3 of Division 30 of the Public Resources Code, including the fee imposed pursuant to Section 42464 of the Public Resources Code.

(2) Except as provided in subdivision (e), a covered electronic device identified in the regulations adopted by the department, pursuant to subdivision (b), shall, on and after July 1 of the year subsequent to the

year in which the covered electronic device is first identified in the regulations, be subject to Chapter 8.5 (commencing with Section 42460) of Part 3 of Division 30 of the Public Resources Code, including the fee imposed pursuant to Section 42464 of the Public Resources Code.

(e) (1) If the manufacturer of an electronic device that is identified in the regulations adopted by the department pursuant to subdivision (b) obtains the concurrence of the department that an electronic device, when discarded, would not be a hazardous waste, in accordance with procedures set forth in Section 66260.200 of Title 22 of the California Code of Regulations, the electronic device shall cease to be a covered electronic device and shall cease to be subject to subdivisions (c) and (d) on the first day of the quarter that begins not less than 30 days after the date that the department provides the manufacturer with a written nonhazardous concurrence for the electronic device pursuant to this subdivision. A manufacturer shall notify each retailer, to which that manufacturer has sold a covered electronic device, that the device has been determined pursuant to this subdivision to be nonhazardous and is no longer subject to a covered electronic recycling fee.

(2) No later than 10 days after the date that the department issues a written nonhazardous concurrence to the manufacturer, the department shall do both of the following:

(A) Post on the department's Web site a copy of the nonhazardous concurrence, including, but not limited to, an identification and description of the electronic device to which the concurrence applies.

(B) Send a copy of the nonhazardous concurrence, including, but not limited to, an identification and description of the electronic device to which the concurrence applies, to the California Integrated Waste Management Board and the State Board of Equalization.

(f) Notwithstanding Section 42474 of the Public Resources Code, a fine or penalty shall not be assessed on a retailer who unknowingly sells, or offers for sale, in this state a covered electronic device for which the covered electronic waste recycling fee has not been collected or paid, if the failure to collect the fee was due to the failure of the State Board of Equalization to inform the retailer that the electronic device was subject to the fee.

SEC. 3. Section 25214.10.2 is added to the Health and Safety Code, to read:

25214.10.2. A regulation adopted pursuant to this article may be adopted as an emergency regulation in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the

public peace, health, and safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, an emergency regulation adopted by the department pursuant to this section shall be filed with, but not be repealed by, the Office of Administrative Law and shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.

SEC. 4. Section 42463 of the Public Resources Code is amended to read:

42463. For the purposes of this chapter, the following terms have the following meanings, unless the context clearly requires otherwise:

(a) ''Account'' means the Electronic Waste Recovery and Recycling Account created in the Integrated Waste Management Fund under Section 42476.

(b) ''Authorized collector'' means any of the following:

(1) A city, county, or district that collects covered electronic devices.

(2) A person or entity that is required or authorized by a city, county, or district to collect covered electronic devices pursuant to the terms of a contract, license, permit, or other written authorization.

(3) A nonprofit organization that collects or accepts covered electronic devices.

(4) A manufacturer or agent of the manufacturer that collects, consolidates, and transports covered electronic devices for recycling from consumers, businesses, institutions, and other generators.

(5) An entity that collects, handles, consolidates, and transports covered electronic devices and has filed applicable notifications with the department pursuant to Chapter 23 (commencing with Section 66273.1) of Division 4.5 of Title 22 of the California Code of Regulations.

(c) ''Board'' means the California Integrated Waste Management Board.

(d) ''Consumer'' means a person who purchases a new or refurbished covered electronic device in a transaction that is a retail sale or in a transaction to which a use tax applies pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

(e) ''Department'' means the Department of Toxic Substances Control.

(f) (1) Except as provided in paragraph (2), ''covered electronic device'' means a video display device containing a screen greater than four inches, measured diagonally, that is identified in the regulations adopted by the department pursuant to subdivision (b) of Section 25214.10.1 of the Health and Safety Code.

(2) ''Covered electronic device'' does not include any of the following:

(A) A video display device that is a part of a motor vehicle, as defined in Section 415 of the Vehicle Code, or any component part of a motor vehicle assembled by, or for, a vehicle manufacturer or franchised dealer, including replacement parts for use in a motor vehicle.

(B) A video display device that is contained within, or a part of a piece of industrial, commercial, or medical equipment, including monitoring or control equipment.

(C) A video display device that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, or air purifier.

(D) An electronic device, on and after the date that it ceases to be a covered electronic device under subdivision (e) of Section 25214.10.1 of the Health and Safety Code.

(g) ''Covered electronic waste'' or ''covered e-waste'' means a covered electronic device that is discarded.

(h) ''Covered electronic waste recycling fee'' or ''covered e-waste recycling fee'' means the fee imposed pursuant to Article 3 (commencing with Section 42464).

(i) ''Covered electronic waste recycler'' or ''covered e-waste recycler'' means any of the following:

(1) A person who engages in the manual or mechanical separation of covered electronic devices to recover components and commodities contained therein for the purpose of reuse or recycling.

(2) A person who changes the physical or chemical composition of a covered electronic device, in accordance with the requirements of Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code and the regulations adopted pursuant to that chapter, by deconstructing, size reduction, crushing, cutting, sawing, compacting, shredding, or refining for purposes of segregating components, for purposes of recovering or recycling those components, and who arranges for the transport of those components to an end user.

(3) A manufacturer who meets any conditions established by this chapter and Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code for the collection or recycling of covered electronic waste.

(j) ''Discarded'' has the same meaning as defined in subdivision (b) of Section 25124 of the Health and Safety Code.

(k) ''Electronic waste recovery payment'' means an amount established and paid by the board pursuant to Section 42477.

(*l*) ''Electronic waste recycling payment'' means an amount established and paid by the board pursuant to Section 42478.

(m) ''Hazardous material'' has the same meaning as defined in Section 25501 of the Health and Safety Code.

(n) ''Manufacturer'' means any of the following:

(1) A person who manufactures a covered electronic device sold in this state.

(2) A person who sells a covered electronic device in this state under that person's brand name.

(o) ''Person'' means an individual, trust firm, joint stock company, business concern, and corporation, including, but not limited to, a government corporation, partnership, limited liability company, and association. Notwithstanding Section 40170, ''person'' also includes a city, county, city and county, district, commission, the state or a department, agency, or political subdivision thereof, an interstate body, and the United States and its agencies and instrumentalities to the extent permitted by law.

(p) ''Recycling'' has the same meaning as defined in subdivision (a) of Section 25121.1 of the Health and Safety Code.

(q) ''Refurbished,'' when used to describe a covered electronic device, means a device that the manufacturer has tested and returned to a condition that meets factory specifications for the device, has repackaged, and has labeled as refurbished.

(r) ''Retailer'' means a person who makes a retail sale of a new or refurbished covered electronic device. ''Retailer'' includes a manufacturer of a covered electronic device who sells that covered electronic device directly to a consumer through any means, including, but not limited to, a transaction conducted through a sales outlet, catalog, or the Internet, or any other similar electronic means.

(s) (1) ''Retail sale'' has the same meaning as defined under Section 6007 of the Revenue and Taxation Code.

(2) ''Retail sale'' does not include the sale of a covered electronic device that is temporarily stored or used in California for the sole purpose of preparing the covered electronic device for use thereafter solely outside the state, and that is subsequently transported outside the state and thereafter used solely outside the state.

(t) ''Video display device'' means an electronic device with an output surface that displays, or is capable of displaying, moving graphical images or a visual representation of image sequences or pictures, showing a number of quickly changing images on a screen in fast succession to create the illusion of motion, including, if applicable, a device that is an integral part of the display, in that it cannot be easily removed from the display by the consumer, that produces the moving image on the screen. A video display device may use, but is not limited to, a cathode ray tube (CRT), liquid crystal display (LCD), gas plasma, digital light processing, or other image projection technology.

SEC. 5. Section 42464 of the Public Resources Code is amended to read:

42464. (a) On and after January 1, 2005, or as otherwise provided by Section 25214.10.1 of the Health and Safety Code, a consumer shall pay a covered electronic waste recycling fee upon the purchase of a new or refurbished covered electronic device, in the following amounts:

(1) Six dollars ($6) for each covered electronic device with a screen size of less than 15 inches measured diagonally.

(2) Eight dollars ($8) for each covered electronic device with a screen size greater than or equal to 15 inches but less than 35 inches measured diagonally.

(3) Ten dollars ($10) for each covered electronic device with a screen size greater than or equal to 35 inches measured diagonally.

(b) Except as provided in subdivision (d), a retailer shall collect from the consumer a covered electronic waste recycling fee at the time of the retail sale of a covered electronic device.

(c) A retailer may retain 3 percent of the covered electronic waste recycling fee as reimbursement for all costs associated with the collection of the fee and shall transmit the remainder of the fee to the state pursuant to Section 42464.4.

(d) If a retailer elects to pay the covered electronic waste recycling fee on behalf of the consumer, the retailer shall provide an express statement to that effect on the receipt given to the consumer at the time of sale. If a retailer elects to pay the covered electronic waste recycling fee on behalf of the consumer, the fee is a debt owed by the retailer to the state, and the consumer is not liable for the fee.

(e) The retailer shall separately state the covered electronic waste recycling fee on the receipt given to the consumer at the time of sale.

(f) On or before August 1, 2005, and, thereafter, no more frequently than annually, and no less frequently than biennially, the board, in collaboration with the department, shall review, at a public hearing, the covered electronic waste recycling fee and shall make any adjustments to the fee to ensure that there are sufficient revenues in the account to fund the covered electronic waste recycling program established pursuant to this chapter. Adjustments to the fee that are made on or before August 1 shall apply to the calendar year beginning the following January 1. The board shall base an adjustment of the covered electronic waste recycling fee on both of the following factors:

(1) The sufficiency, and any surplus, of revenues in the account to fund the collection, consolidation, and recycling of covered electronic waste that is projected to be recycled in the state.

(2) The sufficiency of revenues in the account for the board and the department to administer, enforce, and promote the program established pursuant to this chapter, plus a prudent reserve not to exceed 5 percent of the amount in the account.

SEC. 6. Section 42464.2 of the Public Resources Code is repealed.

SEC. 7. Section 42464.2 is added to the Public Resources Code, to read:

42464.2. The State Board of Equalization shall collect the fee imposed pursuant to this chapter under the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code). For the purposes of this section, a reference in the Fee Collection Procedures Law to ''feepayer'' shall include a retailer and a consumer.

SEC. 8. Section 42464.4 is added to the Public Resources Code, to read:

42464.4. (a) The covered electronic waste recycling fee shall be due and payable quarterly on or before the last day of the month following each calendar quarter. The payments shall be accompanied by a return in the form as prescribed by the State Board of Equalization or that person authorized to collect, including, but not limited to, electronic media.

(b) The State Board of Equalization may require the payment of the fee and the filing of returns for other than quarterly periods.

SEC. 8.5. Section 42464.6 is added to the Public Resources Code, to read:

42464.6. (a) The State Board of Equalization shall not accept or consider a petition for redetermination of fees determined under this chapter if the petition is founded upon the grounds that an item is or is not a covered electronic device. The State Board of Equalization shall forward to the department any appeal of a determination that is based on the grounds that an item is or is not a covered electronic device.

(b) The State Board of Equalization shall not accept or consider a claim for refund of fees paid pursuant to this chapter if the claim is founded upon the grounds that an item is or is not a covered electronic device. The State Board of Equalization shall forward to the department any claim for refund that is based on the grounds that an item is or is not a covered electronic device.

SEC. 9. Section 42465 of the Public Resources Code is amended to read:

42465. On and after the date specified in subdivision (a) of Section 42464, a person shall not sell a new or refurbished covered electronic device to a consumer in this state if the board or department determines that the manufacturer of that covered electronic device is not in compliance with this chapter or as provided otherwise by Section 25214.10.1 of the Health and Safety Code.

SEC. 10. Section 42465.1 of the Public Resources Code is amended to read:

42465.1. On and after January 1, 2005, or as specified otherwise in Section 25214.10.1 of the Health and Safety Code, a person may not sell

or offer for sale in this state a new or refurbished covered electronic device unless the device is labeled with the name of the manufacturer or the manufacturer's brand label, so that it is readily visible.

SEC. 11. Section 42465.2 of the Public Resources Code is amended to read:

42465.2. (a) On or before July 1, 2005, or as specified otherwise in Section 25214.10.1 of the Health and Safety Code, and at least once annually thereafter as determined by the board, each manufacturer of a covered electronic device sold in this state shall do all of the following:

(1) Submit to the board a report that includes all of the following information:

(A) An estimate of the number of covered electronic devices sold by the manufacturer in the state during the previous year.

(B) A baseline or set of baselines that show the total estimated amounts of mercury, cadmium, lead, hexavalent chromium, and PBB's used in covered electronic devices manufactured by the manufacturer in that year and the reduction in the use of those hazardous materials from the previous year.

(C) A baseline or set of baselines that show the total estimated amount of recyclable materials contained in covered electronic devices sold by the manufacturer in that year and the increase in the use of those recyclable materials from the previous year.

(D) A baseline or a set of baselines that describe any efforts to design covered electronic devices for recycling and goals and plans for further increasing design for recycling.

(E) A list of those retailers, including, but not limited to, Internet and catalog retailers, to which the manufacturer provided a notice in the prior 12 months pursuant to Section 42465.3 and subdivision (c) of Section 25214.10.1 of the Health and Safety Code.

(2) Make information available to consumers, that describes where and how to return, recycle, and dispose of the covered electronic device and opportunities and locations for the collection or return of the device, through the use of a toll-free telephone number, Internet Web site, information labeled on the device, information included in the packaging, or information accompanying the sale of covered electronic device.

(b) (1) For the purposes of complying with paragraph (1) of subdivision (a), a manufacturer may submit a report to the board that includes only those covered electronic devices that include applications of the compounds listed in subparagraph (B) of paragraph (1) of subdivision (a) that are exempt from the Directive 2002/95/EC adopted by the European Parliament and the Council of the European Union on January 27, 2003, and any amendments made to that directive, if both

of the following conditions are met, as modified by Section 24214.10 of the Health and Safety Code:

(A) The manufacturer submits written verification to the department that demonstrates, to the satisfaction of the department, that the manufacturer is in compliance with Directive 2002/95/EC, and any amendments to that directive, for those covered electronic devices for which it is not submitting a report to the board pursuant to this subdivision.

(B) The department certifies that the manufacturer is in compliance with Directive 2002/95/EC, and any amendments to that directive, for those covered electronic devices for which the manufacturer is not submitting a report to the board pursuant to this subdivision.

(2) When reporting pursuant to this subdivision, a manufacturer is required only to report on specific applications of compounds used in covered electronic devices that are exempt from Directive 2002/95/EC.

(c) Any information submitted to the board pursuant to subdivision (a) that is proprietary in nature or a trade secret shall be subject to protection under state laws and regulations governing that information.

SEC. 12. Section 42465.3 of the Public Resources Code is amended to read:

42465.3. A manufacturer of a covered electronic device shall comply with the notification requirements of subdivision (c) of Section 25214.10.1 of the Health and Safety Code.

SEC. 13. Section 42475 of the Public Resources Code is amended to read:

42475. (a) The board shall administer and enforce this chapter in consultation with the department.

(b) The board and the department may adopt regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code that are necessary to implement this chapter, and any other regulations that the board and the department determines are necessary to implement the provisions of this chapter in a manner that is enforceable.

(c) The board shall adopt regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code that ensure the protection of any proprietary information submitted to the board by a manufacturer of covered electronic devices.

(d) The board and the department may prepare, publish, or issue any materials that the board or department determines to be necessary for the dissemination of information concerning the activities of the board or department under this chapter.

(e) In carrying out this chapter, the board and the department may solicit and use any and all expertise available in other state agencies,

including, but not limited to, the department, the Department of Conservation, and the State Board of Equalization.

SEC. 14. Section 42475.1 of the Public Resources Code is repealed.

SEC. 15. Section 42475.2 of the Public Resources Code is amended to read:

42475.2. (a) The board and the department may each adopt regulations to implement and enforce this chapter as emergency regulations.

(b) The emergency regulations adopted pursuant to this chapter shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulations adopted by the board or the department pursuant to this section shall be filed with, but not be repealed by, the Office of Administrative Law and shall remain in effect for a period of two years or until revised by the department or the board, whichever occurs sooner.

SEC. 16. Section 42476 of the Public Resources Code is amended to read:

42476. (a) The Electronic Waste and Recovery and Recycling Account is hereby established in the Integrated Waste Management Fund. All fees collected pursuant to this chapter shall be deposited in the account. Notwithstanding Section 13340 of the Government Code, the funds in the account are hereby continuously appropriated, without regard to fiscal year, for the following purposes:

(1) To pay refunds of the covered electronic waste recycling fee imposed under Section 42464.

(2) To make electronic waste recovery payments to an authorized collector of covered electronic waste pursuant to Section 42479.

(3) To make electronic waste recycling payments to covered electronic waste recyclers pursuant to Section 42479.

(4) To make payments to manufacturers pursuant to subdivision (g).

(b) (1) The money in the account may be expended for the following purposes only upon appropriation by the Legislature in the annual Budget Act:

(A) For the administration of this chapter by the board and the department.

(B) To reimburse the State Board of Equalization for its administrative costs of registering, collecting, making refunds, and

auditing retailers and consumers in connection with the covered electronic waste recycling fee imposed under Section 42464.

(C) To provide funding to the department to implement and enforce Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code, as that chapter relates to covered electronic devices, and any regulations adopted by the department pursuant to that chapter.

(D) To establish the public information program specified in subdivision (d).

(2) Any fines or penalties collected pursuant to this chapter shall be deposited in the Electronic Waste Penalty Subaccount, which is hereby established in the account. The funds in the Electronic Waste Penalty Subaccount may be expended by the board or department only upon appropriation by the Legislature.

(c) Notwithstanding Section 16475 of the Government Code, any interest earned upon funds in the Electronic Waste Recovery and Recycling Account shall be deposited in that account for expenditure pursuant to this chapter.

(d) Not more than 1 percent of the funds annually deposited in the Electronic Waste Recovery and Recycling Account shall be expended for the purposes of establishing the public information program to educate the public in the hazards of improper covered electronic device storage and disposal and on the opportunities to recycle covered electronic devices.

(e) The board shall adopt regulations specifying cancellation methods for the recovery, processing, or recycling of covered electronic waste.

(f) The board may pay an electronic waste recycling payment or electronic waste recovery payment for covered electronic waste only if all of the following conditions are met:

(1) The covered electronic waste, including any residuals from the processing of the waste, is handled in compliance with all applicable statutes and regulations.

(2) The manufacturer or the authorized collector or recycler of the electronic waste provide a cost free and convenient opportunity to recycle electronic waste, in accordance with the legislative intent specified in subdivision (b) of Section 42461.

(3) If the covered electronic waste is processed, the covered electronic waste is processed in this state according to the cancellation method authorized by the board.

(4) The board declares that the state is a market participant in the business of the recycling of covered electronic waste for all of the following reasons:

(A) The fee is collected from the state's consumers for covered electronic devices sold for use in the state.

(B) The purpose of the fee and subsequent payments is to prevent damage to the public health and the environment from waste generated in the state.

(C) The recycling system funded by the fee ensures that economically viable and sustainable markets are developed and supported for recovered materials and components in order to conserve resources and maximize business and employment opportunities within the state.

(g) (1) The board may make a payment to a manufacturer that takes back a covered electronic device from a consumer in this state for purposes of recycling the device at a processing facility. The amount of the payment made by the board shall equal the value of the covered electronic waste recycling fee paid for that device. To qualify for a payment pursuant to this subdivision, the manufacturer shall demonstrate both of the following to the board:

(A) The covered electronic device for which payment is claimed was used in this state.

(B) The covered electronic waste for which a payment is claimed, including any residuals from the processing of the waste, has been, and will be, handled in compliance with all applicable statutes and regulations.

(2) A covered electronic device for which a payment is made under this subdivision is not eligible for an electronic waste recovery payment or an electronic waste recycling payment under Section 42479.

SEC. 17. Section 42476.5 of the Public Resources Code is amended to read:

42476.5. A person who exports covered electronic waste, or a covered electronic device intended for recycling or disposal, to a foreign country, or to another state for ultimate export to a foreign country, shall do all of the following at least 60 days prior to export:

(a) Notify the department of the destination, disposition, contents, and volume of the waste, or device intended for recycling or disposal to be exported, and include with the notification the demonstrations required pursuant to subdivisions (b) to (e), inclusive.

(b) Demonstrate that the waste or device is being exported for the purposes of recycling or disposal.

(c) Demonstrate that the importation of the waste or device is not prohibited by an applicable law in the state or country of destination and that any import will be conducted in accordance with all applicable laws. As part of this demonstration, required import and operating licenses, permits, or other appropriate authorization documents shall be forwarded to the department.

(d) Demonstrate that the exportation of the waste or device is conducted in accordance with applicable United States or applicable international law.

(e) (1) Demonstrate that the waste or device will be managed within the country of destination only at facilities whose operations meet or exceed the binding decisions and implementing guidelines of the Organization for Economic Cooperation and Development for the environmentally sound management of the waste or device being exported.

(2) The demonstration required by this subdivision applies to any country of destination, notwithstanding that the country is not a member of the Organization for Economic Cooperation and Development.

SEC. 18. Section 42477 of the Public Resources Code is amended to read:

42477. (a) On July 1, 2004, or as specified otherwise in Section 25214.10.1 of the Health and Safety Code, and on July 1 every two years thereafter, the board in collaboration with the department shall establish an electronic waste recovery payment schedule for covered electronic wastes generated in this state to cover the net cost for an authorized collector to operate a free and convenient system for collecting, consolidating and transporting covered electronic wastes generated in this state.

(b) The board shall make the electronic waste recovery payments either directly to an authorized collector or to a covered electronic waste recycler for payment to an authorized collector pursuant to this article.

SEC. 19. Section 42478 of the Public Resources Code is amended to read:

42478. (a) Except as provided in subdivision (b), on July 1, 2004, or as specified otherwise in Section 25214.10.1 of the Health and Safety Code, and on July 1 every two years thereafter, the board, in collaboration with the department, shall establish a covered electronic waste recycling payment schedule for covered electronic wastes generated in this state to cover the average net cost for an electronic waste recycler to receive, process, and recycle each major category, as determined by the board, of covered electronic waste received from an authorized collector. The board shall make the electronic waste recycling payments to a covered electronic waste recycler pursuant to this article.

(b) Until the board adopts a new payment schedule that covers the average net cost for an electronic waste recycler to receive, process, and recycle each major category, as determined by the board of covered electronic waste received from an authorized collector, the amount of the covered electronic waste recycling payment shall be equal to twenty-eight cents ($0.28) per pound of the total weight of covered

electronic waste received from an authorized collector and subsequently processed for recycling.

SEC. 20. Section 42479 of the Public Resources Code is amended to read:

42479. (a) (1) For covered electronic waste collected for recycling on and after January 1, 2005, the board shall make electronic waste recovery payments and electronic waste recycling payments for the collection and recycling of covered electronic waste to an authorized collector or covered electronic waste recycler, respectively, upon receipt of a completed and verified invoice submitted to the board by the authorized collector or recycler in the form and manner determined by the board.

(2) To the extent authorized pursuant to Section 42477, a covered electronic waste recycler shall make the electronic waste recovery payments to an authorized collector upon receipt of a completed and verified invoice submitted to the recycler by the authorized collector in the form and manner determined by the board.

(b) An e-waste recycler is eligible for a payment pursuant to this section only if the e-waste recycler meets all of the following requirements:

(1) The e-waste recycler is in compliance with applicable requirements of Article 6 (commencing with Section 66273.70) of Chapter 23 of Division 4.5 of Title 22 of the California Code of Regulations.

(2) The e-waste recycler demonstrates to the board that any facility utilized by the e-waste recycler for the handling, processing, refurbishment, or recycling of covered electronic devices meets all of the following standards:

(A) The facility has been inspected by the department within the past 12 months and had been found to be operating in conformance with all applicable laws, regulations, and ordinances.

(B) The facility is accessible during normal business hours for unannounced inspections by state or local agencies.

(C) The facility has health and safety, employee training, and environmental compliance plans and certifies compliance with the plans.

(D) The facility meets or exceed the standards specified in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2, Division 4 (commencing with Section 3200), and Division 5 (commencing with Section 6300), of the Labor Code or, if all or part of the work is to be performed in another state, the equivalent requirements of that state.

SEC. 21. Section 42485 of the Public Resources Code is amended to read:

42485. Except as provided in subdivision (b) of Section 42486, the board and the department shall not implement this chapter if either of the following occur:

(a) A federal law, or a combination of federal laws, takes effect and does all of the following:

(1) Establishes a program for the collection, recycling, and proper disposal of covered electronic waste that is applicable to all covered electronic devices sold in the United States.

(2) Provides revenues to the state to support the collection, recycling, and proper disposal of covered electronic waste, in an amount that is equal to, or greater than, the revenues that would be generated by the fee imposed under Section 42464.

(3) Requires covered electronic device manufacturers, retailers, handlers, processors, and recyclers to dispose of those devices in a manner that is in compliance with all applicable federal, state, and local laws, and prohibits the devices from being exported for disposal in a manner that poses a significant risk to the public health or the environment.

(b) A trial court issues a judgment, which is not appealed, or an appellate court issues an order affirming a judgment of a trial court, holding that out-of-state manufacturers or retailers, or both, may not be required to collect the fee authorized by this chapter. The out-of-state manufacturers or retailers, or both, shall continue to collect the fee during the appellate process.

SEC. 22. Section 42486 is added to the Public Resources Code, to read:

42486. (a) Except as provided in subdivision (b), the provisions of this chapter shall become inoperative on the date that either of the events described in subdivision (a) or (b) of Section 42485 occurs, and if both occur, the earlier date.

(b) On the date specified in subdivision (a), the provisions of this chapter shall remain operative only for the collection of fees, the liability for which accrued prior to that date, making refunds, effecting credits, the disposition of moneys collected, and commencing an action or proceeding pursuant to this chapter.

SEC. 23. Section 48000 of the Public Resources Code is amended to read:

48000. (a) Each operator of a disposal facility shall pay a fee quarterly to the State Board of Equalization which is based on the amount, by weight or volumetric equivalent, as determined by the board, of all solid waste disposed of at each disposal site.

(b) The fee for solid waste disposed of shall be one dollar and thirty-four cents ($1.34) per ton. Commencing with the 1995–96 fiscal year, the amount of the fee shall be established by the board at an amount

that is sufficient to generate revenues equivalent to the approved budget for that fiscal year, including a prudent reserve, but shall not exceed one dollar and forty cents ($1.40) per ton.

(c) The board shall notify the State Board of Equalization on the first day of the period in which the rate shall take effect of any rate change adopted pursuant to this section.

(d) The board and the State Board of Equalization shall ensure that all the fees for solid waste imposed pursuant to this section that are collected at a transfer station are paid to the State Board of Equalization in accordance with this article.

SEC. 24. (a) The Director of Finance shall transfer, as a loan, up to five million dollars ($5,000,000) from the General Fund, and up to twenty-five million dollars ($25,000,000) from any special fund authorized by law, to the California Integrated Waste Management Board, to implement the changes made to the Electronic Waste Recycling Act by the act adding this section.

(b) Any loan made pursuant to this section shall be repaid on or before November 1, 2005, and shall be repaid prior to making any expenditures pursuant to paragraph (1), (2), (3) or (4) of subdivision (a) of Section 42476 of the Public Resources Code.

SEC. 25. 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. 26. 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 statutory changes needed to facilitate the collection of the electronic waste recycling fee and efficiently implement the Electronic Waste Recycling Act of 2003, thereby protecting public health and safety and the environment, it is necessary that this act take effect immediately.

CHAPTER 864

An act to add Section 11161.5 to the Penal Code, relating to medical crime.

[Approved by Governor September 29, 2004. Filed with
Secretary of State September 29, 2004.]

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

SECTION 1. (a) The Legislature finds and declares that, for the past 20 years, medical journals have reported that when physicians fail to manage their patients' pain appropriately it is partially out of fear of criminal prosecution. It is the intent of the Legislature to alleviate this fear by providing for proper review of cases involving the prescription of pain medication before criminal charges are filed.

(b) It is the intent of the Legislature to encourage physicians to provide adequate pain management to patients in California consistent with Section 2241.5 of the Business and Professions Code, the Intractable Pain Treatment Act.

(c) It is the intent of the Legislature that, where patient records are seized in connection with criminal investigations, physicians should not be prematurely disabled from practicing medicine by not having access to their patient treatment records during those investigations. It is the further intent of the Legislature that, where medical records have been seized in a criminal investigation or prosecution, patients should have access to their medical records through their physicians to continue treatment.

SEC. 2. Section 11161.5 is added to the Penal Code, to read:

11161.5. (a) It is the intent of the Legislature that on or before January 1, 2006, the California District Attorneys Association, in conjunction with interested parties, including, but not limited to, the Department of Justice, the California Narcotic Officers' Association, the California Police Chiefs' Association, the California State Sheriffs' Association, the California Medical Association, the American Pain Society, the American Academy of Pain Medicine, the California Society of Anesthesiologists, the California Chapter of the American College of Emergency Physicians, the California Medical Board, the California Orthopedic Association, and other medical and patient advocacy entities specializing in pain control therapies, shall develop protocols for the development and implementation of interagency investigations in connection with a physician's prescription of medication to patients. The protocols are intended to assure the competent review of, and that relevant investigation procedures are followed for, the suspected undertreatment, undermedication, overtreatment, and overmedication of pain cases. Consideration shall be made for the special circumstances of urban and rural communities. The investigation protocol shall be designed to facilitate communication between the medical and law enforcement communities and the timely

return of medical records pertaining to the identity, diagnosis, prognosis, or treatment of any patient that are seized by law enforcement from a physician who is suspected of engaging in or having engaged in criminal activity related to the documents.

(b) The costs incurred by the California District Attorneys Association in implementing this section shall be solicited and funded from nongovernmental entities.

CHAPTER 865

An act to amend Sections 5651, 5657, 5659, 7011.4, 7028.1, 7048, 7068, 7071.9, 7071.11, 7083, 7085, 7090.1, 7121, 7137, 7804, 7806, 7830, 7833, 7835, 7835.1, 7837, 7845, 7852, 7860, 8024.1, 8027, 8764, and 22575 of, to add Section 7843 to, and to repeal Sections 7019.5, 7021, and 7124.5 of, the Business and Professions Code, to amend Sections 9148.8 and 11521 of the Government Code, to amend Sections 25159.12 and 25208.2 of the Health and Safety Code, to amend Section 662 of the Public Resources Code, and to amend Section 13273 of the Water Code, relating to professions and vocations.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 2004.]

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

SECTION 1. Section 5651 of the Business and Professions Code is amended to read:

5651. (a) The board shall by means of examination, ascertain the professional qualifications of all applicants for licenses to practice landscape architecture in this state and shall issue a license to every person whom it finds to be qualified on payment of the initial license fee prescribed by this chapter.

(b) The examination shall consist of a written examination. The written examination may be waived by the board if the applicant (1) is currently licensed by a United States jurisdiction, Canadian province, or Puerto Rico and has passed a written examination equivalent to that which is required in California at the time of application and (2) has passed the California supplemental examination if, at the time of application, it is required of all California applicants.

SEC. 2. Section 5657 of the Business and Professions Code is amended to read:

5657. Each licensee shall file his or her current mailing address with the board at its office in Sacramento, California, and shall notify the

board of any and all changes of mailing address, providing both his or her old and new address within 30 days after a change. A penalty as provided in this chapter shall be paid by a licensee who fails to notify the board within 30 days after a change of address.

SEC. 3. Section 5659 of the Business and Professions Code is amended to read:

5659. Each person licensed under this chapter shall sign, date, and seal or stamp using a seal or stamp described in this section, all plans, specifications, and other instruments of service therefor, prepared for others as evidence of the person's responsibility for those documents. Failure to comply with this section constitutes a ground for disciplinary action. Each person licensed under this chapter shall use a seal or stamp of the design authorized by the board, bearing his or her name, license number, the legend ''licensed landscape architect,'' the legend ''State of California'' and a means of providing a signature, the renewal date of the license, and date of signing and sealing or stamping.

SEC. 4. Section 7011.4 of the Business and Professions Code is amended to read:

7011.4. (a) Notwithstanding Section 7011, there is in the Contractors' State License Board, a separate enforcement unit which shall rigorously enforce this chapter prohibiting all forms of unlicensed activity.

(b) Persons employed as enforcement representatives in this unit and designated by the Director of Consumer Affairs are not peace officers and are not entitled to safety member retirement benefits. They do not have the power of arrest. However, they may issue a written notice to appear in court pursuant to Chapter 5c (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code.

SEC. 5. Section 7019.5 of the Business and Professions Code is repealed.

SEC. 6. Section 7021 of the Business and Professions Code is repealed.

SEC. 7. Section 7028.1 of the Business and Professions Code is amended to read:

7028.1. It is a misdemeanor for any contractor, whether licensed or unlicensed, to perform or engage in asbestos-related work, as defined in Section 6501.8 of the Labor Code, without certification pursuant to Section 7058.5 of this code, or to perform or engage in a removal or remedial action, as defined in subdivision (d) of Section 7058.7, or, unless otherwise exempted by this chapter, to bid for the installation or removal of, or to install or remove, an underground storage tank, without certification pursuant to Section 7058.7. A contractor in violation of this section is subject to one of the following penalties:

(a) Conviction of a first offense is punishable by a fine of not less than one thousand dollars ($1,000) or more than three thousand dollars ($3,000), and by possible revocation or suspension of any contractor's license.

(b) Conviction of a subsequent offense requires a fine of not less than three thousand dollars ($3,000) or more than five thousand dollars ($5,000), or imprisonment in the county jail not exceeding one year, or both the fine and imprisonment, and a mandatory action to suspend or revoke any contractor's license.

SEC. 8. Section 7048 of the Business and Professions Code is amended to read:

7048. This chapter does not apply to any work or operation on one undertaking or project by one or more contracts, the aggregate contract price which for labor, materials, and all other items, is less than five hundred dollars ($500), that work or operations being considered of casual, minor, or inconsequential nature.

This exemption does not apply in any case wherein the work of construction is only a part of a larger or major operation, whether undertaken by the same or a different contractor, or in which a division of the operation is made in contracts of amounts less than five hundred dollars ($500) for the purpose of evasion of this chapter or otherwise.

This exemption does not apply to a person who advertises or puts out any sign or card or other device which might indicate to the public that he or she is a contractor or that he or she is qualified to engage in the business of a contractor.

SEC. 9. Section 7068 of the Business and Professions Code is amended to read:

7068. (a) The board shall require an applicant to show such degree of knowledge and experience in the classification applied for, and such general knowledge of the building, safety, health, and lien laws of the state and of the administrative principles of the contracting business as the board deems necessary for the safety and protection of the public.

(b) An applicant shall qualify in regard to his or her experience and knowledge in one of the following ways:

(1) If an individual, he or she shall qualify by personal appearance or by the appearance of his or her responsible managing employee who is qualified for the same license classification as the classification being applied for.

(2) If a copartnership or a limited partnership, it shall qualify by the appearance of a general partner or by the appearance of a responsible managing employee who is qualified for the same license classification as the classification being applied for.

(3) If a corporation, or any other combination or organization, it shall qualify by the appearance of a responsible managing officer or

responsible managing employee who is qualified for the same license classification as the classification being applied for.

(c) A responsible managing employee for the purpose of this chapter shall mean an individual who is a bona fide employee of the applicant and is actively engaged in the classification of work for which that responsible managing employee is the qualifying person in behalf of the applicant.

(d) The board shall, in addition, require an applicant who qualifies by means of a responsible managing employee under either paragraph (1) or (2) of subdivision (b) to show his or her general knowledge of the building, safety, health, and lien laws of the state and of the administrative principles of the contracting business as the board deems necessary for the safety and protection of the public.

(e) Except in accordance with Section 7068.1, no person qualifying on behalf of an individual or firm under paragraph (1), (2), or (3) of subdivision (b) shall hold any other active contractor's license while acting in the capacity of a qualifying individual pursuant to this section.

(f) At the time of application for renewal of a license, the responsible managing individual shall file a statement with the registrar, on a form prescribed by the registrar, verifying his or her capacity as a responsible managing individual to the licensee.

(g) Statements made by or on behalf of an applicant as to the applicant's experience in the classification applied for shall be verified by a qualified and responsible person. In addition, the registrar shall, as specified by board regulation, randomly review a percentage of such statements for their veracity.

(h) The registrar shall review experience gained by applicants from other states to determine whether all of that experience was gained in a lawful manner in that state.

SEC. 10. Section 7071.9 of the Business and Professions Code is amended to read:

7071.9. (a) If the qualifying individual, as referred to in Sections 7068 and 7068.1, is not either the proprietor, a general partner, or joint licensee, he or she shall file or have on file a qualifying individual's bond as provided in Section 7071.10 in the sum of seven thousand five hundred dollars ($7,500). This bond is in addition to, and may not be combined with, any contractor's bond required by Sections 7071.5 to 7071.8, inclusive, and is required for the issuance, reinstatement, reactivation, or continued valid use of a license. However, on and after January 1, 2007, the sum of the bond that a qualifying individual is required to have on file shall be twelve thousand five hundred dollars ($12,500).

(b) Excluding the claims brought by the beneficiaries specified in paragraph (1) of subdivision (a) of Section 7071.10, the aggregate

liability of a surety on claims brought against the bond required by this section shall not exceed the sum of seven thousand five hundred dollars ($7,500). The bond proceeds in excess of seven thousand five hundred dollars ($7,500) shall be reserved exclusively for the claims of the beneficiaries specified in paragraph (1) of subdivision (a) of Section 7071.10. However, nothing in this section shall be construed to prevent any beneficiary specified in paragraph (1) of subdivision (a) of Section 7071.10 from claiming or recovering the full measure of the bond required by this section. This bond is in addition to, and may not be combined with, any contractor's bond required by Sections 7071.5 to 7071.8, inclusive, and is required for the issuance, reinstatement, reactivation, or continued valid use of a license.

(c) The responsible managing officer of a corporation shall not be required to file or have on file a qualifying individual's bond, if he or she owns 10 percent or more of the voting stock of the corporation and certifies to that fact on a form prescribed by the registrar.

SEC. 11. Section 7071.11 of the Business and Professions Code is amended to read:

7071.11. (a) The aggregate liability of a surety on a claim for wages and fringe benefits brought against any bond required by this article, other than a bond required by Section 7071.8, shall not exceed the sum of four thousand dollars ($4,000). If any bond which may be required is insufficient to pay all claims in full, the sum of the bond shall be distributed to all claimants in proportion to the amount of their respective claims. Any action, other than an action to recover wages or fringe benefits, against a contractor's bond or a bond of a qualifying individual filed by an active licensee shall be brought within two years after the expiration of the license period during which the act or omission occurred, or within two years of the date the license of the active licensee was inactivated, canceled, or revoked by the board, whichever first occurs. Any action, other than an action to recover wages or fringe benefits, against a disciplinary bond filed by an active licensee pursuant to Section 7071.8 shall be brought within two years after the expiration of the license period during which the act or omission occurred, or within two years of the date the license of the active licensee was inactivated, canceled, or revoked by the board, or within two years after the last date for which a disciplinary bond filed pursuant to Section 7071.8 was required, whichever date is first. A claim to recover wages or fringe benefits shall be brought within six months from the date that the wage or fringe benefit delinquencies were discovered, but in no event shall a civil action thereon be brought later than two years from the date the wage or fringe benefit contributions were due.

(b) Whenever the surety makes payment on any claim against a bond required by this article, whether or not payment is made through a court

action or otherwise, the surety shall, within 30 days of the payment, provide notice to the registrar. The notice required by this subdivision shall provide the following information by declaration on a form prescribed by the registrar:

(1) The name and license number of the contractor.

(2) The surety bond number.

(3) The amount of payment.

(4) The statutory basis upon which the claim is made.

(5) The names of the person or persons to whom payments have been made.

(6) Whether or not the payments were the result of a good faith action by the surety.

The notice shall also clearly indicate whether or not the licensee filed a protest in accordance with this section.

(c) Prior to the settlement of a claim through a good faith payment by the surety, a licensee shall have not less than 15 days in which to provide a written protest. This protest shall instruct the surety not to make payment from the bond on the licensee's account upon the specific grounds that the claim is opposed by the licensee, and provide the surety a specific and reasonable basis for the licensee's opposition to payment.

(1) Whenever a licensee files a protest in accordance with this subdivision, the board shall investigate the matter and file disciplinary action as set forth under this chapter if there is evidence that the surety has sustained a loss as the result of a good faith payment made for the purpose of mitigating any damages incurred by any person or entity covered under Section 7071.5.

(2) Any licensee that fails to file a protest as specified in this subdivision shall have 90 days from the date of notification by the board to submit proof of payment of the actual amount owed to the surety and, if applicable, proof of payment of any judgment or admitted claim in excess of the amount of the bond or, by operation of law, the license shall be suspended at the end of the 90 days. A license suspension pursuant to this subdivision shall be disclosed indefinitely as a failure to settle outstanding final liabilities in violation of this chapter. The disclosure specified by this subdivision shall also be applicable to all licenses covered by the provisions of subdivision (d).

(d) No license may be renewed, reissued, or reinstated while any judgment or admitted claim in excess of the amount of the bond remains unsatisfied. Further, no license may be renewed, reissued, or reinstated while any surety remains unreimbursed for any loss or expense sustained on any bond issued for the licensee or for any entity of which any officer, director, member, partner, or qualifying person was an officer, director, member, partner, or qualifying person of the licensee while the licensee was subject to suspension or disciplinary action under this section.

(e) The licensee may provide the board with a notarized copy of an accord, reached with the surety to satisfy the debt in lieu of full payment. By operation of law, failure to abide by the accord shall result in the automatic suspension of any license to which this section applies. A license that is suspended for failure to abide by the accord may only be renewed or reinstated when proof of satisfaction of all debts is made.

(f) Legal fees may not be charged against the bond by the board.

(g) In any case in which a claim is filed against a deposit given in lieu of a bond by any employee or by an employee organization on behalf of an employee, concerning wages or fringe benefits based upon the employee's employment, claims for the nonpayment shall be filed with the Labor Commissioner. The Labor Commissioner shall, pursuant to the authority vested by Section 96.5 of the Labor Code, conduct hearings to determine whether or not the wages or fringe benefits should be paid to the complainant. Upon a finding by the commissioner that the wages or fringe benefits should be paid to the complainant, the commissioner shall notify the registrar of the findings. The registrar shall not make payment from the deposit on the basis of findings by the commissioner for a period of 10 days following determination of the findings. If, within the period, the complainant or the contractor files written notice with the registrar and the commissioner of an intention to seek judicial review of the findings pursuant to Section 11523 of the Government Code, the registrar shall not make payment, if an action is actually filed, except as determined by the court. If, thereafter, no action is filed within 60 days following determination of findings by the commissioner, the registrar shall make payment from the deposit to the complainant.

(h) Any action, other than an action to recover wages or fringe benefits, against a deposit given in lieu of a contractor's bond or bond of a qualifying individual filed by an active licensee shall be brought within three years after the expiration of the license period during which the act or omission occurred, or within three years after the date the license was inactivated, canceled, or revoked by the board, whichever first occurs. Any action, other than an action to recover wages or fringe benefits, against a deposit given in lieu of a disciplinary bond filed by an active licensee pursuant to Section 7071.8 shall be brought within three years after the expiration of the license period during which the act or omission occurred, or within three years of the date the license of the active licensee was inactivated, canceled, or revoked by the board, or within three years after the last date for which a deposit given in lieu of a disciplinary bond filed pursuant to Section 7071.8 was required, whichever date is first. If the board is notified of a complaint relative to a claim against the deposit, the deposit shall not be released until the complaint has been adjudicated.

SEC. 12. Section 7083 of the Business and Professions Code is amended to read:

7083. All licensees shall notify the registrar, on a form prescribed by the registrar, in writing within 90 days of any change to information recorded under this chapter. This notification requirement shall include, but not be limited to, changes in business address, personnel, business name, qualifying individual bond exemption pursuant to Section 7071.9, or exemption to qualify multiple licenses pursuant to Section 7068.1.

Failure of the licensee to notify the registrar of any change to information within 90 days shall cause the change to be effective the date the written notification is received at the board's headquarters office.

Failure to notify the registrar of the changes within the 90 days is grounds for disciplinary action.

SEC. 13. Section 7085 of the Business and Professions Code is amended to read:

7085. (a) After investigating any verified complaint alleging a violation of Section 7107, 7109, 7110, 7113, 7119, or 7120, and any complaint arising from a contract involving works of improvement and finding a possible violation, the registrar may, with the concurrence of both the licensee and the complainant, refer the alleged violation, and any dispute between the licensee and the complainant arising thereunder, to arbitration pursuant to this article, provided the registrar finds that:

(1) There is evidence that the complainant has suffered or is likely to suffer material damages as a result of a violation of Section 7107, 7109, 7110, 7113, 7119, or 7120, and any complaint arising from a contract involving works of improvement.

(2) There are reasonable grounds for the registrar to believe that the public interest would be better served by arbitration than by disciplinary action.

(3) The licensee does not have a history of repeated or similar violations.

(4) The licensee was in good standing at the time of the alleged violation.

(5) The licensee does not have any outstanding disciplinary actions filed against him or her.

(6) The parties have not previously agreed to private arbitration of the dispute pursuant to contract or otherwise.

(7) The parties have been advised of the provisions of Section 2855 of the Civil Code.

For the purposes of paragraph (1), ''material damages'' means damages greater than seven thousand five hundred dollars ($7,500) and less than fifty thousand dollars ($50,000).

(b) In all cases in which a possible violation of the sections set forth in paragraph (1) of subdivision (a) exists and the contract price is equal to or less than seven thousand five hundred dollars ($7,500), or the demand for damages is equal to or less than seven thousand five hundred dollars ($7,500) regardless of the contract price, the complaint shall be referred to arbitration, utilizing the criteria set forth in paragraphs (2) to (6), inclusive, of subdivision (a).

SEC. 14. Section 7090.1 of the Business and Professions Code is amended to read:

7090.1. (a) (1) Notwithstanding any other provisions of law, the failure to pay a civil penalty, or to comply with an order of correction or an order to pay a specified sum to an injured party in lieu of correction once the order has become final, shall result in the automatic suspension of a license by operation of law 30 days after noncompliance with the terms of the order.

(2) The registrar shall notify the licensee in writing of the failure to comply with the final order and that the license shall be suspended 30 days from the date of the notice.

(3) The licensee may contest the determination of noncompliance within 15 days after service of the notice, by written notice to the registrar. Upon receipt of the written notice, the registrar may reconsider the determination and after reconsideration may affirm or set aside the suspension.

(4) Reinstatement may be made at any time following the suspension by complying with the final order of the citation. If no reinstatement of the license is made within 90 days of the date of the automatic suspension, the cited license and any other contractors' license issued to the licensee shall be automatically revoked by operation of law for a period to be determined by the registrar pursuant to Section 7102.

(5) The registrar may delay, for good cause, the revocation of a contractor's license for failure to comply with the final order of the citation. The delay in the revocation of the license shall not exceed one year. When seeking a delay of the revocation of his or her license, a licensee shall apply to the registrar in writing prior to the date of the revocation of the licensee's license by operation of law and state the reasons that establish good cause for the delay. The registrar's power to grant a delay of the revocation shall expire upon the effective date of the revocation of the licensee's license by operation of law.

(b) The cited licensee shall also be automatically prohibited from serving as an officer, director, associate, partner, or qualifying individual of another licensee, for the period determined by the registrar, and the employment, election, or association of that person by a licensee shall constitute grounds for disciplinary action. Any qualifier disassociated pursuant to this section shall be replaced within 90 days of the date of

disassociation. Upon failure to replace the qualifier within 90 days of the prohibition, the license of the other licensee shall be automatically suspended or the qualifier's classification removed at the end of the 90 days.

SEC. 15. Section 7121 of the Business and Professions Code is amended to read:

7121. Any person who has been denied a license for a reason other than failure to document sufficient satisfactory experience for a supplemental classification for an existing license, or who has had his or her license revoked, or whose license is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a member, officer, director, or associate of any partnership, corporation, firm, or association whose application for a license has been denied for a reason other than failure to document sufficient satisfactory experience for a supplemental classification for an existing license, or whose license has been revoked, or whose license is under suspension, or who has failed to renew a license while it was under suspension, and while acting as a member, officer, director, or associate had knowledge of or participated in any of the prohibited acts for which the license was denied, suspended, or revoked, shall be prohibited from serving as an officer, director, associate, partner, or qualifying individual of a licensee, and the employment, election, or association of this type of person by a licensee in any capacity other than as a nonsupervising bona fide employee shall constitute grounds for disciplinary action.

SEC. 16. Section 7124.5 of the Business and Professions Code is repealed.

SEC. 17. Section 7137 of the Business and Professions Code is amended to read:

7137. The board shall set fees by regulation. These fees shall not exceed the following schedule:

(a) The application fee for an original license in a single classification shall not be more than three hundred dollars ($300).

The application fee for each additional classification applied for in connection with an original license shall not be more than seventy-five dollars ($75).

The application fee for each additional classification pursuant to Section 7059 shall not be more than seventy-five dollars ($75).

The application fee to replace a responsible managing officer or employee pursuant to Section 7068.2 shall not be more than seventy-five dollars ($75).

(b) The fee for rescheduling an examination for an applicant who has applied for an original license, additional classification, a change of responsible managing officer or responsible managing employee, or for

an asbestos certification or hazardous substance removal certification, shall not be more than sixty dollars ($60).

(c) The fee for scheduling or rescheduling an examination for a licensee who is required to take the examination as a condition of probation shall not be more than sixty dollars ($60).

(d) The initial license fee for an active or inactive license shall not be more than one hundred eighty dollars ($180).

(e) The renewal fee for an active license shall not be more than three hundred sixty dollars ($360).

The renewal fee for an inactive license shall not be more than one hundred eighty dollars ($180).

(f) The delinquency fee is an amount equal to 50 percent of the renewal fee, if the license is renewed after its expiration.

(g) The registration fee for a home improvement salesperson shall not be more than seventy-five dollars ($75).

(h) The renewal fee for a home improvement salesperson registration shall not be more than seventy-five dollars ($75).

(i) The application fee for an asbestos certification examination shall not be more than seventy-five dollars ($75).

(j) The application fee for a hazardous substance removal or remedial action certification examination shall not be more than seventy-five dollars ($75).

SEC. 18. Section 7804 of the Business and Professions Code is amended to read:

7804. Only a person registered as a geologist under the provisions of this chapter shall be entitled to take and use the title ''professional geologist.'' Only a person registered as a geologist and certified under the provisions of this chapter shall be entitled to take and use the title of a registered certified specialty geologist.

SEC. 19. Section 7806 of the Business and Professions Code is amended to read:

7806. A subordinate is any person who assists a professional geologist or registered geophysicist in the practice of geology or geophysics without assuming the responsible charge of work.

SEC. 20. Section 7830 of the Business and Professions Code is amended to read:

7830. It is unlawful for anyone other than a geologist registered under this chapter to stamp or seal any plans, specifications, plats, reports, or other documents with the seal or stamp of a professional geologist or registered certified specialty geologist, or to use in any manner the title ''professional geologist'' or the title of any registered certified specialty geologist unless registered or registered and certified under this chapter.

SEC. 21. Section 7833 of the Business and Professions Code is amended to read:

7833. This chapter does not prohibit one or more geologists or geophysicists from practicing through the medium of a sole proprietorship, partnership, or corporation. In a partnership or corporation whose primary activity consists of geological services, at least one partner or officer shall be a professional geologist. In a partnership or corporation whose primary activity consists of geophysical services, at least one partner or officer shall be a registered geophysicist.

SEC. 22. Section 7835 of the Business and Professions Code is amended to read:

7835. All geologic plans, specifications, reports, or documents shall be prepared by a professional geologist or registered certified specialty geologist, or by a subordinate employee under his or her direction. In addition, they shall be signed by the professional geologist or registered certified specialty geologist or stamped with his or her seal, either of which shall indicate his or her responsibility for them.

SEC. 23. Section 7835.1 of the Business and Professions Code is amended to read:

7835.1. All geophysical plans, specifications, reports, or documents shall be prepared by a registered geophysicist, registered certified specialty geophysicist, professional geologist, registered certified specialty geologist, or by a subordinate employee under his or her direction. In addition, they shall be signed by the registered geophysicist, registered certified specialty geophysicist, professional geologist, or registered certified specialty geologist, or stamped with his or her seal, either of which shall indicate his or her responsibility for them.

SEC. 24. Section 7837 of the Business and Professions Code is amended to read:

7837. A subordinate to a geologist or geophysicist registered under this chapter, insofar as he or she acts solely in that capacity, is exempt from registration under the provisions of this chapter. This exemption, however, does not permit any subordinate to practice geology or geophysics for others in his or her own right or to use the title ''professional geologist'' or ''registered geophysicist.''

SEC. 25. Section 7843 is added to the Business and Professions Code, to read:

7843. (a) An applicant for certification as a geologist-in-training shall, upon making a passing grade in the National Association of State Boards of Geology's Fundamentals of Geology examination be issued a certificate as a geologist-in-training. A renewal or other fee, other than the application fee, may not be charged for this certification. The

certificate shall become invalid when the holder has qualified as a professional geologist as provided in Section 7841.

(b) A geologist-in-training certificate does not authorize the holder thereof to practice or offer to practice geology, in his or her own right, or to use the title specified in Section 7804.

(c) It is unlawful for anyone other than the holder of a valid geologist-in-training certificate issued under this chapter to use the title of ''geologist-in-training'' or any abbreviation of that title.

SEC. 26. Section 7845 of the Business and Professions Code is amended to read:

7845. Examinations for registration as a geologist or registered certified specialty geologist shall test the applicant's knowledge of geology and of any established specialty for which he or she applies and his or her ability to apply that knowledge and to assume responsible charge in the professional practice of geology or a certified specialty geology, or both geology and a certified specialty geology.

SEC. 27. Section 7852 of the Business and Professions Code is amended to read:

7852. (a) Each geologist registered under this chapter may, upon registration, obtain a seal of the design authorized by the board bearing the registrant's name, number of his or her certificate, and the legend ''professional geologist.''

(b) Each specialty geologist certified under this chapter may, upon certification, obtain a seal of the design authorized by the board bearing the registrant's name, number of his or her certificate, and the legend ''certified specialty geologist.''

SEC. 28. Section 7860 of the Business and Professions Code is amended to read:

7860. (a) The board may, upon its own initiative or upon the receipt of a complaint, investigate the actions of any professional geologist, geophysicist, or person granted temporary authorizations pursuant to Sections 7848 and 7848.1, and make findings thereon.

(b) By a majority vote, the board may publicly reprove, suspend for a period not to exceed two years, or revoke the certificate of any geologist or geophysicist registered hereunder, or may publicly reprove or revoke the temporary authorization granted to any person pursuant to Section 7848 or 7848.1, on any of the following grounds:

(1) Conviction of a crime substantially related to the qualifications, functions, or duties of a geologist or geophysicist.

(2) Misrepresentation, fraud, or deceit by a geologist or geophysicist in his or her practice.

(3) Negligence or incompetence by a geologist or geophysicist in his or her practice.

(4) Violation of any contract undertaken in the capacity of a geologist or geophysicist.

(5) Fraud or deceit in obtaining a certificate to practice as a geologist or geophysicist, or in obtaining a temporary authorization to practice pursuant to Section 7848 or 7848.1.

(c) By a majority vote, the board may publicly reprove, suspend for a period not to exceed two years, or may revoke the certificate of any geologist or geophysicist registered under this chapter, or may publicly reprove or revoke the temporary authorization granted to any person pursuant to Section 7848 or 7848.1, for unprofessional conduct. Unprofessional conduct includes, but is not limited to, any of the following:

(1) Aiding or abetting any person in a violation of this chapter or any regulation adopted by the board pursuant to this chapter.

(2) Violating this chapter or any regulation adopted by the board pursuant to this chapter.

(3) Conduct in the course of practice as a geologist or geophysicist that violates professional standards adopted by the board.

SEC. 29. Section 8024.1 of the Business and Professions Code is amended to read:

8024.1. Every person to whom a certificate is issued shall, as a condition precedent to its issuance, and in addition to any other fee which may be payable, pay the initial certificate fee prescribed by this chapter. Prior to receipt of an initial certificate fee, the board may issue an interim permit of a limited duration, but only to candidates eligible for certification under Section 8020. A limited permit shall be valid for 45 days, or until the board issues a certificate to the limited permitholder. If the board issues interim permits, the initial certificate fee, and any other fee that may be payable, shall be paid prior to the issuance of the certificate.

SEC. 30. Section 8027 of the Business and Professions Code is amended to read:

8027. (a) As used in this section, ''school'' means a court reporter training program or an institution that provides a course of instruction approved by the board and the Bureau for Private Postsecondary and Vocational Education, is a public school in this state, or is accredited by the Western Association of Schools and Colleges.

(b) A court reporting school shall be primarily organized to train students for the practice of shorthand reporting, as defined in Sections 8016 and 8017. Its educational program shall be on the postsecondary or collegiate level. It shall be legally organized and authorized to conduct its program under all applicable laws of the state, and shall conform to and offer all components of the minimum prescribed course of study established by the board. Its records shall be kept and shall be maintained

in a manner to render them safe from theft, fire, or other loss. The records shall indicate positive daily and clock-hour attendance of each student for all classes, apprenticeship and graduation reports, high school transcripts or the equivalent or self-certification of high school graduation or the equivalent, transcripts of other education, and student progress to date, including all progress and counseling reports.

(c) Any school intending to offer a program in court reporting shall notify the board within 30 days of the date on which it provides notice to, or seeks approval from, the California Department of Education, the Bureau for Private Postsecondary and Vocational Education, the Chancellor's Office of the California Community Colleges, or the Western Association of Schools and Colleges, whichever is applicable. The board shall review the proposed curriculum and provide the school tentative approval, or notice of denial, within 60 days of receipt of the notice. The school shall apply for provisional recognition pursuant to subdivision (d) within no more than one year from the date it begins offering court reporting classes.

(d) The board may grant provisional recognition to a new court reporting school upon satisfactory evidence that it has met all of the provisions of subdivision (b) and this subdivision. Recognition may be granted by the board to a provisionally recognized school after it has been in continuous operation for a period of no less than three consecutive years from the date provisional recognition was granted, during which period the school shall provide satisfactory evidence that at least one person has successfully completed the entire course of study established by the board and complied with the provisions of Section 8020, and has been issued a certificate to practice shorthand reporting as defined in Sections 8016 and 8017. The board may, for good cause shown, extend the three-year provisional recognition period for not more than one year. Failure to meet the provisions and terms of this section shall require the board to deny recognition. Once granted, recognition may be withdrawn by the board for failure to comply with all applicable laws and regulations.

(e) Application for recognition of a court reporting school shall be made upon a form prescribed by the board and shall be accompanied by all evidence, statements, or documents requested. Each branch, extension center, or off-campus facility requires separate application.

(f) All recognized and provisionally recognized court reporting schools shall notify the board of any change in school name, address, telephone number, responsible court reporting program manager, owner of private schools, and the effective date thereof, within 30 days of the change. All of these notifications shall be made in writing.

(g) A school shall notify the board in writing immediately of the discontinuance or pending discontinuance of its court reporting program

or any of the program's components. Within two years of the date this notice is sent to the board, the school shall discontinue its court reporting program in its entirety. The board may, for good cause shown, grant not more than two one-year extensions of this period to a school. If a student is to be enrolled after this notice is sent to the board, a school shall disclose to the student the fact of the discontinuance or pending discontinuance of its court reporting program or any of its program components.

(h) The board shall maintain a roster of currently recognized and provisionally recognized court reporting schools, including, but not limited to, the name, address, telephone number, and the name of the responsible court reporting program manager of each school.

(i) The board shall maintain statistics that display the number and passing percentage of all first-time examinees, including, but not limited to, those qualified by each recognized or provisionally recognized school and those first-time examinees qualified by other methods as defined in Section 8020.

(j) Inspections and investigations shall be conducted by the board as necessary to carry out this section, including, but not limited to, unannounced site visits.

(k) All recognized and provisionally recognized schools shall print in their school or course catalog the name, address, and telephone number of the board. At a minimum, the information shall be in 8-point bold type and include the following statement:

''IN ORDER FOR A PERSON TO QUALIFY FROM A SCHOOL TO TAKE THE STATE LICENSING EXAMINATION, THE PERSON SHALL COMPLETE A PROGRAM AT A RECOGNIZED SCHOOL. FOR INFORMATION CONCERNING THE MINIMUM REQUIREMENTS THAT A COURT REPORTING PROGRAM MUST MEET IN ORDER TO BE RECOGNIZED, CONTACT: THE COURT REPORTERS BOARD OF CALIFORNIA; (ADDRESS); (TELEPHONE NUMBER).''

(*l*) Each court reporting school shall file with the board, not later than June 30 of each year, a current school catalog that shows all course offerings and staff, and for private schools, the owner, except that where there have been no changes to the catalog within the previous year, no catalog need be sent. In addition, each school shall also file with the board a statement certifying whether the school is in compliance with all statutes and the rules and regulations of the board, signed by the responsible court reporting program manager.

(m) A school offering court reporting may not make any written or verbal claims of employment opportunities or potential earnings unless

those claims are based on verified data and reflect current employment conditions.

(n) If a school offers a course of instruction that exceeds the board's minimum requirements, the school shall disclose orally and in writing the board's minimum requirements and how the course of instruction differs from those criteria. The school shall make this disclosure before a prospective student executes an agreement obligating that person to pay any money to the school for the course of instruction. The school shall also make this disclosure to all students enrolled on January 1, 2002.

(o) Private and public schools shall provide each prospective student with all of the following and have the prospective student sign a document that shall become part of that individual's permanent record, acknowledging receipt of each item:

(1) A student consumer information brochure published by the board.

(2) A list of the school's graduation requirements, including the number of tests, the pass point of each test, the speed of each test, and the type of test, such as jury charge or literary.

(3) A list of requirements to qualify for the state certified shorthand reporter licensing examination, including the number of tests, the pass point of each test, the speed of each test, and the type of test, such as jury charge or literary, if different than those requirements listed in paragraph (2).

(4) A copy of the school's board-approved benchmarks for satisfactory progress as identified in subdivision (u).

(5) A report showing the number of students from the school who qualified for each of the certified shorthand reporter licensing examinations within the preceding two years, the number of those students that passed each examination, the time, as of the date of qualification, that each student was enrolled in court reporting school, and the placement rate for all students that passed each examination.

(6) On and after January 1, 2005, the school shall also provide to prospective students the number of hours each currently enrolled student who has qualified to take the next licensing test, exclusive of transfer students, has attended court reporting classes.

(p) All enrolled students shall have the information in subdivisions (n) and (o) on file no later than June 30, 2005.

(q) Public schools shall provide the information in subdivisions (n) and (o) to each new student the first day he or she attends theory or machine speed class, if it was not provided previously.

(r) Each enrolled student shall be provided written notification of any change in qualification or graduation requirements that is being implemented due to the requirements of any one of the school's oversight agencies. This notice shall be provided to each affected student

at least 30 days before the effective date of the change and shall state the new requirement and the name, address, and telephone number of the agency that is requiring it of the school. Each student shall initial and date a document acknowledging receipt of that information and that document, or a copy thereof, shall be made part of the student's permanent file.

(s) Schools shall make available a comprehensive final examination in each academic subject to any student desiring to challenge an academic class in order to obtain credit towards certification for the state licensing examination. The points required to pass a challenge examination shall not be higher than the minimum points required of other students completing the academic class.

(t) An individual serving as a teacher, instructor, or reader shall meet the qualifications specified by regulation for his or her position.

(u) Each school shall provide a substitute teacher or instructor for any class for which the teacher or instructor is absent for two consecutive days or more.

(v) The board has the authority to approve or disapprove benchmarks for satisfactory progress which each school shall develop for its court reporting program. Schools shall use only board-approved benchmarks to comply with the provisions of paragraph (4) of subdivision (o) and subdivision (u).

(w) Each school shall counsel each student a minimum of one time within each 12-month period to identify the level of attendance and progress, and the prognosis for completing the requirements to become eligible to sit for the state licensing examination. If the student has not progressed in accordance with the board-approved benchmarks for that school, the student shall be counseled a minimum of one additional time within that same 12-month period.

(x) The school shall provide to the board, for each student qualifying through the school as eligible to sit for the state licensing examination, the number of hours the student attended court reporting classes, both academic and machine speed classes, including theory.

(y) The pass rate of first-time exam takers for each school offering court reporting shall meet or exceed the average pass rate of all first-time test takers for a majority of examinations given for the preceding three years. Failure to do so shall require the board to conduct a review of the program. In addition, the board may place the school on probation and may withdraw recognition if the school continues to place below the above described standard on the two exams that follow the three-year period.

(z) A school shall not require more than one 10-minute qualifying examination, as defined in the regulations of the board, for a student to be eligible to sit for the state certification examination.

(aa) A school shall provide the board the actual number of hours of attendance for each applicant the school qualifies for the state licensing examination.

(bb) The board shall, by December 1, 2001, do the following by regulation as necessary:

(1) Establish the format that shall be used by schools to report tracking of all attendance hours and actual timeframes for completed coursework.

(2) Require schools to provide a minimum of 10 hours of live dictation class each school week for every full-time student.

(3) Require schools to provide students with the opportunity to read back from their stenographic notes a minimum of one time each day to his or her instructor.

(4) Require schools to provide students with the opportunity to practice with a school-approved speed-building tape, or other assigned material, a minimum of one hour per day after school hours as a homework assignment and provide the notes from this tape to their instructor the following day for review.

(5) Develop standardization of policies on the use and administration of qualifier examinations by schools.

(6) Define qualifier exam as follows: the qualifier exam shall consist of 4-voice testimony of 10-minute duration at 200 wpm, graded at 97.5 percent accuracy, and in accordance with the guidelines followed by the board. Schools shall be required to date and number each qualifier and announce the date and number to the students at the time of administering the qualifier. All qualifiers shall indicate the actual dictation time of the test and the school shall catalog and maintain the qualifier for a period of not less than three years for the purpose of inspection by the board.

(7) Require schools to develop a program to provide students with the opportunity to interact with professional court reporters to provide skill support, mentoring, or counseling which they can document at least quarterly.

(8) Define qualifications and educational requirements required of instructors and readers that read test material and qualifiers.

(cc) The board shall adopt regulations to implement the requirements of this section not later than September 1, 2002.

(dd) The board may recover costs for any additional expenses incurred under the enactment amending this section in the 2001–02 Regular Session of the Legislature pursuant to its fee authority in Section 8031.

SEC. 31. Section 8764 of the Business and Professions Code is amended to read:

8764. The record of survey shall show the applicable provisions of the following consistent with the purpose of the survey:

(a) All monuments found, set, reset, replaced, or removed, describing their kind, size, and location, and giving other data relating thereto.

(b) Bearing or witness monuments, basis of bearings, bearing and length of lines, scale of map, and north arrow.

(c) Name and legal designation of the property in which the survey is located, and the date or time period of the survey.

(d) The relationship to those portions of adjacent tracts, streets, or senior conveyances which have common lines with the survey.

(e) Memorandum of oaths.

(f) Statements required by Section 8764.5.

(g) Any other data necessary for the intelligent interpretation of the various items and locations of the points, lines, and areas shown, or convenient for the identification of the survey or surveyor, as may be determined by the civil engineer or land surveyor preparing the record of survey.

The record of survey shall also show, either graphically or by note, the reason or reasons, if any, why the mandatory filing provisions of subdivisions paragraphs (1) to (5), inclusive, of subdivision (b) of Section 8762 apply.

The record of survey need not consist of a survey of an entire property.

SEC. 32. Section 22575 of the Business and Professions Code is amended to read:

22575. (a) An operator of a commercial Web site or online service that collects personally identifiable information through the Internet about individual consumers residing in California who use or visit its commercial Web site or online service shall conspicuously post its privacy policy on its Web site, or in the case of an operator of an online service, make that policy available in accordance with paragraph (5) of subdivision (b) of Section 22577. An operator shall be in violation of this subdivision only if the operator fails to post its policy within 30 days after being notified of noncompliance.

(b) The privacy policy required by subdivision (a) shall do all of the following:

(1) Identify the categories of personally identifiable information that the operator collects through the Web site or online service about individual consumers who use or visit its commercial Web site or online service and the categories of third-party persons or entities with whom the operator may share that personally identifiable information.

(2) If the operator maintains a process for an individual consumer who uses or visits its commercial Web site or online service to review and request changes to any of his or her personally identifiable

information that is collected through the Web site or online service, provide a description of that process.

(3) Describe the process by which the operator notifies consumers who use or visit its commercial Web site or online service of material changes to the operator's privacy policy for that Web site or online service.

(4) Identify its effective date.

SEC. 33. Section 9148.8 of the Government Code is amended to read:

9148.8. (a) The Joint Committee on Boards, Commissions, and Consumer Protection, acting pursuant to a request from the chairperson of the appropriate policy committee, shall evaluate a plan prepared pursuant to Section 9148.4 or 9148.6.

(b) Evaluations prepared by the Joint Committee on Boards, Commissions, and Consumer Protection pursuant to this section shall be provided to the respective policy and fiscal committees of the Legislature pursuant to rules adopted by each committee for this purpose.

SEC. 34. Section 11521 of the Government Code is amended to read:

11521. (a) The agency itself may order a reconsideration of all or part of the case on its own motion or on petition of any party. The agency shall notify a petitioner of the time limits for petitioning for reconsideration. The power to order a reconsideration shall expire 30 days after the delivery or mailing of a decision to a respondent, or on the date set by the agency itself as the effective date of the decision if that date occurs prior to the expiration of the 30-day period or at the termination of a stay of not to exceed 30 days which the agency may grant for the purpose of filing an application for reconsideration. If additional time is needed to evaluate a petition for reconsideration filed prior to the expiration of any of the applicable periods, an agency may grant a stay of that expiration for no more than 10 days, solely for the purpose of considering the petition. If no action is taken on a petition within the time allowed for ordering reconsideration, the petition shall be deemed denied.

(b) The case may be reconsidered by the agency itself on all the pertinent parts of the record and such additional evidence and argument as may be permitted, or may be assigned to an administrative law judge. A reconsideration assigned to an administrative law judge shall be subject to the procedure provided in Section 11517. If oral evidence is introduced before the agency itself, no agency member may vote unless he or she heard the evidence.

SEC. 35. Section 25159.12 of the Health and Safety Code is amended to read:

25159.12. For purposes of this article, the following definitions apply:

(a) ''Annulus'' means the space between the outside edge of the injection tube and the well casing.

(b) ''State board'' means the State Water Resources Control Board.

(c) ''Compatibility'' means that waste constituents do not react with each other, with the materials constituting the injection well, or with fluids or solid geologic media in the injection zone or confining zone in a manner as to cause leaching, precipitation of solids, gas or pressure buildup, dissolution, or any other effect which will impair the effectiveness of the confining zone or the safe operation of the injection well.

(d) ''Confining zone'' means the geological formation, or part of a formation, which is intended to be a barrier to prevent the migration of waste constituents from the injection zone.

(e) ''Constituent'' means an element, chemical, compound, or mixture of compounds which is a component of a hazardous waste or leachate and which has the physical or chemical properties that cause the waste to be identified as hazardous waste by the department pursuant to this chapter.

(f) ''Discharge'' means to place, inject, dispose of, or store hazardous wastes into, or in, an injection well owned or operated by the person who is conducting the placing, disposal, or storage.

(g) ''Drinking water'' has the same meaning as ''potential source of drinking water,'' as defined in subdivision (t) of Section 25208.2.

(h) ''Facility'' means the structures, appurtenances, and improvements on the land, and all contiguous land, which are associated with an injection well, which are used for treating, storing, or disposing of hazardous waste. A facility may consist of several waste management units, including, but not limited to, surface impoundments, landfills, underground or aboveground tanks, sumps, pits, ponds, and lagoons, which are associated with an injection well.

(i) ''Groundwater'' means water, including, but not limited to, drinking water below the land surface in a zone of saturation.

(j) ''Hazardous waste'' means any hazardous waste specified as hazardous waste or extremely hazardous waste, as defined in this chapter. Any waste mixture formed by mixing any waste or substance with a hazardous waste shall be considered hazardous waste for the purposes of this article.

(k) ''Hazardous waste facilities permit'' means a permit issued for an injection well pursuant to Sections 25200 and 25200.6.

(*l*) ''Injection well'' or ''well'' means any bored, drilled, or driven shaft, dug pit, or hole in the ground whose depth is greater than the circumference of the bored hole and any associated subsurface

appurtenances, including, but not limited to, the casing. For the purposes of this article, injection well does not include either of the following:

(1) Wells exempted pursuant to Section 25159.24.

(2) Wells which are regulated by the Division of Oil and Gas in the Department of Conservation pursuant to Division 3 (commencing with Section 3000) of the Public Resources Code and Subpart F of Part 147 of Title 40 of the Code of Federal Regulations and are in compliance with that division and Subpart A (commencing with Section 146.1) of Subchapter D of Chapter 1 of Title 40 of the Code of Federal Regulations.

(m) ''Injection zone'' means that portion of the receiving formation which has received, is receiving, or is expected to receive, over the lifetime of the well, waste fluid from the injection well. ''Injection zone'' does not include that portion of the receiving formation which exceeds the horizontal and vertical extent specified pursuant to Section 25159.20.

(n) ''Owner'' means a person who owns a facility or part of a facility.

(o) ''Perched water'' means a localized body of groundwater that overlies, and is hydraulically separated from, an underlying body of groundwater.

(p) ''pH'' means a measure of a sample's acidity expressed as a negative logarithm of the hydrogen ion concentration.

(q) ''Qualified person'' means a person who has at least five years of full-time experience in hydrogeology and who is a professional geologist registered pursuant to Section 7850 of the Business and Professions Code, or a registered petroleum engineer registered pursuant to Section 6762 of the Business and Professions Code. ''Full-time experience'' in hydrogeology may include a combination of postgraduate studies in hydrogeology and work experience, with each year of postgraduate work counted as one year of full-time work experience, except that not more than three years of postgraduate studies may be counted as full-time experience.

(r) ''Receiving formation'' means the geologic strata that are hydraulically connected to the injection well.

(s) ''Regional board'' means the California regional water quality control board for the region in which the injection well is located.

(t) ''Report'' means the hydrogeological assessment report specified in Section 25179.7.

(u) ''Safe Drinking Water Act'' means Subchapter XII (commencing with Section 300f) of Chapter 6A of Title 42 of the United States Code.

(v) ''Strata'' means a distinctive layer or series of layers of earth materials.

(w) ''Waste management unit'' means that portion of a facility used for the discharge of hazardous waste into or onto land, including all

containment and monitoring equipment associated with that portion of the facility.

SEC. 36. Section 25208.2 of the Health and Safety Code is amended to read:

25208.2. For purposes of this article, the following definitions apply:

(a) ''Active life of the facility'' means that period of time when the facility has the potential to adversely affect the waters of the state, but if the owner enters into an agreement with the board to properly close the impoundment on a specified date, the active life of the facility means that period of time up to that specified date.

(b) ''Background water quality'' means the level of concentration of indicator parameters in groundwater that is not, or has not been, affected by any hazardous waste, hazardous waste constituent, or hazardous waste leachate emanating from a particular waste management unit.

(c) ''Board'' or ''state board'' means the State Water Resources Control Board.

(d) ''Close the impoundment'' means the permanent termination of all hazardous waste discharge operations at a waste management unit and any operations necessary to prepare that waste management unit for postclosure maintenance which are conducted pursuant to the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. Sec. 6901 et seq.), and the regulations adopted by the state board and the department concerning the closure of surface impoundments.

(e) ''Constituent'' means an element, chemical compound, or mixture of compounds which is a component of a hazardous waste or leachate and which has the physical or chemical properties that cause the waste to be identified as hazardous waste by the department.

(f) ''Discharge'' means to place, dispose of, or store liquid hazardous wastes or hazardous wastes containing free liquids into or in a surface impoundment owned or operated by the person who is conducting the placing, disposal, or storage.

(g) ''Emergency containment dike'' means a berm which is located around a tank solely for the purpose of containing any emergency spills from the tank and which does not contain any liquid hazardous waste or hazardous wastes containing free liquids for longer than 48 hours.

(h) ''Facility'' means the structures, appurtenances, and improvements on the land, and all contiguous land, which are used for treating, storing, or disposing of hazardous waste. A facility may consist of several waste management units.

(i) ''Free liquids'' means liquids which readily separate from the solid portion of a hazardous waste under ambient temperature and pressure.

(j) ''Groundwater'' means water below the land surface in a zone of saturation.

(k) ''Hazardous waste'' means a waste that is a hazardous waste, as specified in this chapter.

(*l*) ''Indicator parameters'' means the measureable physical or chemical characteristics in groundwater or soil-pore moisture which are likely to be affected by hazardous waste disposal operations and which are used, for comparison purposes, to assess the result of hazardous waste disposal operations at a particular waste management unit on the waters of the state.

(m) ''Landfill'' means a facility or part of a facility where hazardous waste is placed in or on land for disposal and which is not a land farm, surface impoundment, or an injection well.

(n) ''Leachate'' means any fluid, including any constituents in the liquid, that has percolated through, migrated from, or drained from, a hazardous waste management unit.

(o) ''Owner'' means a person who owns a facility or part of a facility.

(p) ''Perched water'' means a localized body of groundwater that overlies, and is hydraulically separated from, an underlying body of groundwater.

(q) ''pH'' means a measure of a sample's acidity expressed as a negative logarithm of the hydrogen ion concentration.

(r) ''Pile'' means any noncontainerized accumulation of solid, nonflowing hazardous waste which is used for the purpose of treatment or storage.

(s) ''Pollution'' has the same meaning as defined in Section 13050 of the Water Code.

(t) ''Potential source of drinking water'' means either water which is identified or designated in a water quality control plan adopted by a regional board as being suitable for domestic or municipal uses and which is potable, or water which is located in water-bearing strata which is an underground source of drinking water, as defined in Section 146.3 of Title 40 of the Code of Federal Regulations, and which is not an exempted acquifer, as defined in Section 146.4 of Title 40 of the Code of Federal Regulations.

(u) ''Qualified person'' means a person who has at least five years of full-time experience in hydrogeology and who is a certified engineering geologist certified pursuant to Section 7842 of the Business and Professions Code, a professional geologist registered pursuant to Section 7850 of the Business and Professions Code, or a registered civil engineer registered pursuant to Section 6762 of the Business and Professions Code. ''Full-time experience'' in hydrogeology may include a combination of postgraduate studies in hydrogeology and work experience, with each year of postgraduate work counted as one

year of full-time work experience, except that not more than three years of postgraduate studies may be counted as full-time experience.

(v) ''Regional board'' means the California regional water quality control board for the region in which the surface impoundment is located.

(w) ''Report'' means the hydrogeological assessment report specified in Section 25208.8.

(x) ''Surface impoundment'' or ''impoundment'' means a waste management unit or part of a waste management unit which is a natural topographic depression, artificial excavation, or diked area formed primarily of earthen materials, although it may be lined with artificial materials, which is designed to hold an accumulation of liquid hazardous wastes or hazardous wastes containing free liquids, including, but not limited to, holding, storage, settling, or aeration pits, evaporation ponds, percolation ponds, other ponds, and lagoons. Surface impoundment does not include a landfill, a land farm, a pile, emergency containment dike, tank, or an injection well.

(y) ''Tank'' means a stationary device, designed to contain an accumulation of hazardous waste, which is constructed primarily of nonearthen materials such as fiberglass, steel, or plastic to provide structural support, and which has been issued a permit pursuant to Section 25283.

(z) ''Vadose zone'' means the zone between the land surface and the water table.

(aa) ''Waste management unit'' means that portion of a facility used for the discharge of hazardous waste into or onto land, including all containment and monitoring equipment associated with that portion of the facility.

SEC. 37. Section 662 of the Public Resources Code is amended to read:

662. (a) One member of the board shall be a professional geologist with background and experience in mining geology; one member shall be a mining engineer with background and experience in mining minerals in California; one member shall have background and experience in groundwater hydrology, water quality, and rock chemistry; one member shall be a representative of local government with background and experience in urban planning; one member shall have background and experience in the field of environmental protection or the study of ecosystems; one member shall be a professional geologist, registered geophysicist, registered civil engineer, or registered structural engineer with background and experience in seismology; one member shall be a landscape architect with background and experience in soil conservation or revegetation of disturbed soils; one member shall have background and experience in mineral resource conservation,

development, and utilization; and one member shall not be required to have specialized experience.

(b) All members of the board shall represent the general public interest, but not more than one-third of the members at any one time may be currently employed by, or receive more than 25 percent of their annual income, not to exceed $25,000 a year per member, from an entity that owns or operates a mine in California. The representative of local government shall not be considered an employee of an entity that owns or operates a mine if the lead agency employing the representative owns or operates a mine. For purposes of this section, retirement or other benefits paid by a mining entity to an individual who is no longer employed by that entity are not considered to be compensation, if those benefits were earned prior to the date the individual terminated his or her employment with the entity.

(c) If a member of the board determines that he or she has a conflict of interest on a particular matter before the board pursuant to subdivision (b) or Section 663, he or she shall provide the clerk of the board with a brief written explanation of the basis for the conflict of interest, which shall become a part of the public record of the board. The written explanation shall be delivered prior to the time the matter to which it pertains is voted on by the board. This disclosure requirement is in addition to any other conflict-of-interest disclosure requirement imposed by law.

SEC. 38. Section 13273 of the Water Code is amended to read:

13273. (a) The state board shall, on or before January 1, 1986, rank all solid waste disposal sites, as defined in paragraph (5) of subdivision (i) of Section 41805.5 of the Health and Safety Code, based upon the threat they may pose to water quality. On or before July 1, 1987, the operators of the first 150 solid waste disposal sites ranked on the list shall submit a solid waste water quality assessment test to the appropriate regional board for its examination pursuant to subdivision (d). On or before July 1 of each succeeding year, the operators of the next 150 solid waste disposal sites ranked on the list shall submit a solid waste water quality assessment test to the appropriate regional board for its examination pursuant to subdivision (d).

(b) Before a solid waste water quality assessment test report may be submitted to the regional board, a professional geologist, registered pursuant to Section 7850 of the Business and Professions Code, a certified engineering geologist, certified pursuant to Section 7842 of the Business and Professions Code, or a civil engineer registered pursuant to Section 6762 of the Business and Professions Code, who has at least five years' experience in groundwater hydrology, shall certify that the report contains all of the following information and any other information which the state board may, by regulation, require:

(1) An analysis of the surface and groundwater on, under, and within one mile of the solid waste disposal site to provide a reliable indication whether there is any leakage of hazardous waste.

(2) A chemical characterization of the soil-pore liquid in those areas which are likely to be affected if the solid waste disposal site is leaking, as compared to geologically similar areas near the solid waste disposal site which have not been affected by leakage or waste discharge.

(c) If the regional board determines that the information specified in paragraph (1) or (2) is not needed because other information demonstrates that hazardous wastes are migrating into the water, the regional board may waive the requirement to submit this information specified in paragraphs (1) and (2) of subdivision (b). The regional board shall also notify the Department of Toxic Substances Control, and shall take appropriate remedial action pursuant to Chapter 5 (commencing with Section 13300).

(d) The regional board shall examine the report submitted pursuant to subdivision (b) and determine whether the number, location, and design of the wells and the soil testing could detect any leachate buildup, leachate migration, or hazardous waste migration. If the regional board determines that the monitoring program could detect the leachate and hazardous waste, the regional board shall take the action specified in subdivision (e). If the regional board determines that the monitoring program was inadequate, the regional board shall require the solid waste disposal site to correct the monitoring program and resubmit the solid waste assessment test based upon the results from the corrected monitoring program.

(e) The regional board shall examine the approved solid waste assessment test report and determine whether any hazardous waste migrated into the water. If the regional board determines that hazardous waste has migrated into the water, it shall notify the Department of Toxic Substances Control and the California Integrated Waste Management Board and shall take appropriate remedial action pursuant to Chapter 5 (commencing with Section 13300).

(f) When a regional board revises the waste discharge requirements for a solid waste disposal site, the regional board shall consider the information provided in the solid waste assessment test report and any other relevant site-specific engineering data provided by the site operator for that solid waste disposal site as part of a report of waste discharge.

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CHAPTER 866

An act to add and repeal Section 50517.15 of the Health and Safety Code, relating to housing.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 2004.]

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

SECTION 1. Section 50517.15 is added to the Health and Safety Code, to read:

50517.15. (a) It is the intent of the Legislature to authorize local public agencies, nonprofit corporations, and limited partnerships that rent or lease farmworker housing to enter into long-term leases with agricultural employers for farmworker housing in order to improve the ability of local public agencies, nonprofit corporations, and limited partnerships to obtain financing for that housing.

(b) A local public agency, nonprofit corporation, or a limited partnership, as defined in paragraph (1) of subdivision (g) of Section 50517.5, that constructs or rehabilitates farmworker housing for agricultural employees, as defined in paragraph (1) of subdivision (g) of Section 50517.5, with public funds may enter into a lease agreement with an agricultural employer, as defined in subdivision (b) of Section 1140.4 of the Labor Code, for farmworker housing for a term of more than one year if the agricultural employer agrees to lease the farmworker housing to agricultural employees of the employer on the same terms and conditions, including amount of rent, that would otherwise be specified in a rental agreement between the local public agency, nonprofit corporation, or limited partnership and the agricultural employees for that housing and the following conditions are met:

(1) The total rent revenue received by the agricultural employer from the agricultural employees does not exceed the amount that the agricultural employer is required to pay the local public agency, nonprofit corporation, or limited partnership for the lease.

(2) The agricultural employer does not charge or collect a security deposit from an agricultural employee for the housing leased pursuant to this section.

(3) The agricultural employee has the same rights and responsibilities provided to a residential tenant pursuant to the Joe Serna, Jr. Farmworker Housing Grant Program.

(4) The agricultural employer is not responsible for the operation or maintenance of the farmworker housing.

(5) The agricultural employee is required to meet the eligibility requirements of the Joe Serna, Jr. Farmworker Housing Grant Program.

(c) An agricultural employer who enters into a lease agreement with a local public agency, nonprofit corporation, or limited partnership for farmworker housing pursuant to subdivision (b) may enter into a sublease agreement with another agricultural employer for this housing for a term of one year or less if the sublessee agrees to lease the farmworker housing to agricultural employees of this sublessee on the same terms and conditions that would otherwise be specified in a rental agreement between the lessor described in subdivision (b) and the agricultural employees for that housing.

(d) 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 867

An act to amend Section 25744 of the Public Resources Code, relating to energy resources, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 2004.]

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

SECTION 1. Section 25744 of the Public Resources Code is amended to read:

25744. (a) Seventeen and one-half percent of the money collected pursuant to the renewable energy public goods charge shall be used for a multiyear, consumer-based program to foster the development of emerging renewable technologies in distributed generation applications.

(b) Any funds used for emerging technologies pursuant to this section shall be expended in accordance with the report, subject to all of the following requirements:

(1) Funding for emerging technologies shall be provided through a competitive, market-based process that shall be in place for a period of not less than five years, and shall be structured so as to allow eligible emerging technology manufacturers and suppliers to anticipate and plan for increased sale and installation volumes over the life of the program.

(2) The program shall provide monetary rebates, buydowns, or equivalent incentives, subject to subparagraph (C), to purchasers, lessees, lessors, or sellers of eligible electricity generating systems. Incentives shall benefit the end-use consumer of renewable generation by directly and exclusively reducing the purchase or lease cost of the

eligible system, or the cost of electricity produced by the eligible system. Incentives shall be issued on the basis of the rated electrical generating capacity of the system measured in watts, or the amount of electricity production of the system, measured in kilowatthours. Incentives shall be limited to a maximum percentage of the system price, as determined by the commission.

(3) Eligible distributed emerging technologies are photovoltaic, solar thermal electric, fuel cell technologies that utilize renewable fuels, and wind turbines of not more than 50 kilowatts rated electrical generating capacity per customer site, and other distributed renewable emerging technologies that meet the emerging technology eligibility criteria established by the commission. Eligible electricity generating systems are intended primarily to offset part or all of the consumer's own electricity demand, and shall not be owned by local publicly owned electric utilities, nor be located at a customer site that is not receiving distribution service from an electrical corporation that is subject to the renewable energy public goods charge and contributing funds to support programs under this chapter. All eligible electricity generating system components shall be new and unused, shall not have been previously placed in service in any other location or for any other application, and shall have a warranty of not less than five years to protect against defects and undue degradation of electrical generation output. Systems and their fuel resources shall be located on the same premises of the end-use consumer where the consumer's own electricity demand is located, and all eligible electricity generating systems shall be connected to the utility grid in California. The commission may require eligible electricity generating systems to have meters in place to monitor and measure a system's performance and generation. Only systems that will be operated in compliance with applicable law and the rules of the Public Utilities Commission shall be eligible for funding.

(4) The commission shall limit the amount of funds available for any system or project of multiple systems and reduce the level of funding for any system or project of multiple systems that has received, or may be eligible to receive, any government or utility funds, incentives, or credit.

(5) In awarding funding, the commission may provide preference to systems that provide tangible demonstrable benefits to communities with a plurality of minority or low-income populations.

(6) In awarding funding, the commission shall develop and implement eligibility criteria and a system that provides preference to systems based upon system performance, taking into account factors, including, but not limited to, shading, insulation levels, and installation orientation.

(7) At least once annually, the commission shall publish and make available to the public the balance of funds available for emerging

renewable energy resources for rebates, buydowns, and other incentives for the purchase of these resources.

(c) Notwithstanding Section 399.6 of the Public Utilities Code, the commission may expend, until December 31, 2008, up to sixty million dollars ($60,000,000) of the funding allocated to the Renewable Resources Trust Fund for the program established in this section, subject to the repayment requirements of subdivision (f) of Section 25751.

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

In order to ensure the continuing operation of the State Energy Resources Conservation and Development Commission's solar rebate program, it is necessary that this act take effect immediately.

CHAPTER 868

An act to amend Section 24425 of, to add Sections 24465 and 24900 to, and to repeal and add Section 24410 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 2004.]

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

SECTION 1. Section 24410 of the Revenue and Taxation Code is repealed.

SEC. 2. Section 24410 is added to the Revenue and Taxation Code, to read:

24410. (a) For taxable years commencing on or after January 1, 2004, the allowable dividends received deduction with respect to qualified dividends received by a corporation during the taxable year from a corporation that is an insurer within the meaning of Section 28 of Article XIII of the California Constitution, whether or not the insurer is engaged in business in California, if at the time of each dividend payment at least 80 percent of each class of the stock of the insurer was owned, directly or indirectly, by the corporation receiving the dividend shall equal the percentage specified in paragraph (1) of the amount of the qualified dividends received.

(1) For purposes of this subdivision, the percentage is equal to:

(A) Eighty percent for taxable years beginning on or after January 1, 2004, and before January 1, 2008.

(B) Eighty-five percent for taxable years beginning on or after January 1, 2008, and thereafter.

(b) (1) For all taxable years ending on or after December 1, 1997, and commencing before January 1, 2004, a taxpayer may elect to determine its deduction under this section for dividends received by the taxpayer (or the members of the taxpayer's commonly controlled group, if any) during each taxable year from a corporation that is an insurer within the meaning of Section 28 of Article XIII of the California Constitution, whether or not the insurer is engaged in business in California, in an amount equal to 80 percent of the qualified dividends received, if at the time of each dividend payment at least 80 percent of each class of stock of the insurer was owned, directly or indirectly, by the corporation receiving the dividend.

(2) A taxpayer shall make the election under this subdivision by timely filing a return for at least one taxable year ending on or after December 1, 1997, and commencing before January 1, 2004, expressly electing to be subject to the dividends received deduction in accordance with the percentage set forth in paragraph (1), and reporting and remitting any amounts due pursuant to that election.

(3) A return is timely filed for purposes of paragraph (2) if it is filed within 180 days of the effective date of the act adding this section.

(4) By making the election pursuant to this subdivision, the taxpayer agrees to all of the following:

(A) To be subject to the dividends received deduction in accordance with the percentage set forth in paragraph (1) for all taxable years ending on or after December 1, 1997, and commencing before January 1, 2004, for which the Franchise Tax Board may propose an assessment or allow a claim for refund, or in which the final determination of tax for the taxable year has not been made because of a dispute related to the dividends received deduction or the application of Section 24425 to any expense related to that dividends received deduction.

(B) (i) Except as provided in clause (ii), to file a return (or amended return) and remit any amounts due pursuant to the election for all taxable years ending on or after December 1, 1997, and commencing before January 1, 2004, for which the Franchise Tax Board may propose an assessment or allow a claim for refund, within 180 days of the effective date of the act adding this section.

(ii) In the case of a taxable year for which the due date of the return is more than 180 days after the effective date of the act adding this section, to file the return and remit any amounts due pursuant to the election under this subdivision on or before the due date of the return.

(5) For purposes of determining taxable income on the return (or amended returns) filed pursuant to the election set forth in paragraph (1),

Section 24425 does not apply to the amount of the dividends received deduction.

(6) The election is irrevocable. With respect to electing taxpayers, no refund, credit, or offset may be allowed for a deduction for dividends received from an insurance company in excess of the amounts allowed under this subdivision for taxable years ending on or after December 1, 1997, and beginning before January 1, 2004.

(c) For purposes of determining the allowable dividend received deduction under this section, a qualified dividend received during the taxable year means a dividend received by the taxpayer during the taxable year multiplied by the percentage prescribed under paragraph (1), (2), or (3) of this subdivision, as the case may be.

(1) If the ratio of the five-year average net written premiums for all insurance companies in a commonly controlled group to the five-year average total income for all insurance companies in the commonly controlled group for the taxable year is greater than or equal to the applicable percentage, then the percentage under this subdivision shall be 100 percent.

(2) If the ratio of the five-year average net written premiums for all insurance companies in a commonly controlled group to the five-year average total income for all insurance companies in the commonly controlled group for the taxable year is less than the applicable percentage and greater than 10 percent, then the percentage under this subdivision shall be equal to the following fraction, expressed as a percentage:

(A) The numerator is the five-year average net written premiums for the taxable year.

(B) The denominator is the applicable percentage times the five-year average total income for that taxable year.

(3) If the ratio of the five-year average net written premiums for all insurance companies in a commonly controlled group to the five-year average total income for all insurance companies in the commonly controlled group for the taxable year is equal to or less than 10 percent, the percentage under this subdivision shall be zero.

(4) For purposes of this subdivision:

(A) The ''five-year average'' means the aggregate net written premiums or total income, as the case may be, over the five immediately preceding calendar or fiscal years, divided by five. For purposes of this computation, if an insurance company in the commonly controlled group has been in existence for fewer than five years, its aggregate net written premiums and total income shall each be multiplied by five and divided by the number of years of its existence. If an insurance company does not have a regulatory filing requirement, the period covered shall be the fiscal year used for the insurance company's financial statements.

The use of either the calendar year or fiscal year, as the case may be, for determination of the five-year average shall, for the first taxable year in which it is computed, be treated as an accounting method under this part and may thereafter only be changed with the written consent of the Franchise Tax Board.

(B) For taxable years beginning before January 1, 2008, the applicable percentage shall be 60 percent. For taxable years beginning on or after January 1, 2008, the applicable percentage shall be 70 percent.

(d) The following rules apply with respect to the application of this section to dividends received from an insurance company that insures risks of a member of the insurance company's commonly controlled group.

(1) Notwithstanding paragraph (2), for purposes of determining the amount of the deduction authorized by subdivisions (a) and (b), no deduction is allowed for dividends attributable to premiums received or accrued by the insurance company from a member of the insurance company's commonly controlled group. For purposes of this paragraph, dividends attributable to premiums received or accrued from a member of a commonly controlled group is equal to total dividends received multiplied by the greater of either of the following:

(A) The ratio of net written premiums from a member of the insurance company's commonly controlled group divided by total net written premiums.

(B) (i) For a property casualty insurer, the ratio of the underwriting risk associated with a member of the commonly controlled group's insurance contracts to the insurance company's total underwriting risks for all insurance contracts. The underwriting risk is the underwriting risk reserves (losses plus expense risk-based capital after discount) as calculated using the ''RBC Instructions.''

(ii) For a life insurer, the ratio of aggregate reserves for life, accident, and health contracts plus liability for deposit type contracts plus contract claims held for policies issued to members of the insurance company's commonly controlled group divided by total aggregate reserves for life, accident, and health contracts plus liability for deposit type contracts plus contract claims.

(2) Net written premiums do not include premiums received or accrued from another member of the insurance company's commonly controlled group. Premiums from another member of the commonly controlled group is the greater of either of the following:

(A) Net written premiums from a member of the insurance company's commonly controlled group.

(B) (i) For a property casualty insurer, the net written premiums received or accrued by the insurance company multiplied by the ratio of the underwriting risk associated with the member of the commonly

controlled group's insurance contracts to the insurance company's total underwriting risks for all insurance contracts. The underwriting risk is the underwriting risk reserves (loss plus expense risk-based capital after discount) as calculated using the ''RBC Instructions.''

(ii) For a life insurer, net written premiums received or accrued by the insurance company multiplied by the ratio of aggregate reserves for life, accident, and health contracts plus liability for deposit type contracts plus contract claims held for policies issued to members of the insurance company's commonly controlled group divided by total aggregate reserves for life, accident, and health contracts plus liability for deposit type contracts plus contract claims.

(3) For purposes of this section, investment income shall be limited to that portion of investment income equal to the ratio of net written premiums (determined under paragraph (2)) to total net written premiums (determined without regard to paragraph (2)).

(4) For purposes of the limitations described in this subdivision, premiums received or accrued from a member of the insurance company's commonly controlled group does not include premiums where the direct insurance risks ceded by affiliates and assumed by the insurance company originated with a person that is not a member of the insurance company's commonly controlled group.

(e) For purposes of this section:

(1) ''Net written premiums'' means direct written premiums plus premiums from reinsurance assumed, less premiums ceded to a reinsurance company, as would be required to be reported in an insurer's Statutory Annual Statement in accordance with the Annual Statement Instructions and Accounting Practices and Procedures Manual promulgated by the National Association of Insurance Commissioners. Net written premiums from life insurance contracts shall be determined by multiplying the net written premiums received, assumed, or ceded by 1.3. Net written premiums from financial guaranty insurance contracts shall be determined by multiplying the net written premiums received, assumed, or ceded by the lesser of 2.3 or an amount that would cause the ratio of the five-year average net written premiums for all financial guaranty insurance companies in the commonly controlled group to the five-year average total income for all financial guaranty insurance companies in the commonly controlled group to be equal to the applicable percentage. Paragraph (4) of subdivision (c) applies for purposes of the preceding sentence.

(A) ''Direct written premiums'' means amounts written by an insurance company in consideration for insurance and annuity contracts issued to policyholders.

(B) ''Premiums from reinsurance assumed'' means amounts received or accrued by an insurance company in consideration for liabilities it assumes from another insurance company.

(C) ''Premiums ceded'' means insurance premiums paid or accrued by an insurance company to a reinsurer to support the liabilities assumed by the reinsurer.

(2) ''Total income'' means net written premiums plus investment income.

(3) ''Investment income'' means an insurance company's earnings from its investment portfolio, including interest, dividends, realized gains (or losses), and rent, as would be required to be reported in an insurer's Statutory Annual Statement in accordance with the Annual Statement Instructions and Accounting Practices and Procedures Manual promulgated by the National Association of Insurance Commissioners, except as otherwise provided.

(A) Except for reinsurance transactions, realized gains (or losses) do not include losses incurred in transactions with a person that is a member of the taxpayer's or the insurance company's commonly controlled group.

(B) Investment income does not include dividends from a person that is a member of the commonly controlled group. Intercompany dividends that have been eliminated from investment income as would be required to be reported in the Statutory Annual Statement in accordance with the Annual Statement Instructions and Accounting Practices and Procedures Manual promulgated by the National Association of Insurance Commissioners shall not again be eliminated for this purpose.

(C) Investment income does not include income included in the taxpayer's combined report filed in accordance with Chapter 17 (commencing with Section 25101) of this part.

(4) For taxable years beginning before January 1, 2004, the ''RBC Instructions'' as defined in Section 739 of the Insurance Code means the Risk Based Capital Instructions and Report as promulgated by the National Association of Insurance Commissioners, as it read on January 1, 2004. For taxable years beginning on or after January 1, 2004, the ''RBC Instructions'' as defined in Section 739 of the Insurance Code means the Risk Based Capital Instructions and Report as promulgated by the National Association of Insurance Commissioners, or any substantially equivalent successor instructions and report, as it read on January 1 of the year in which the taxpayer's taxable year begins.

(5) The phrase ''commonly controlled group'' shall have the same meaning as that phrase has under Section 25105.

(f) The Franchise Tax Board may prescribe those regulations that may be necessary to provide for the following:

(1) Establishment of a comparable weighting factor as described in paragraph 1 of subdivision (e) for new lines of insurance not described in the act adding this subdivision.

(2) For purposes of determining the applicable ratios described in subdivisions (c) and (d), the inclusion or exclusion of items of investment income to eliminate the effects of devices designed to manipulate those ratios for purposes of avoiding the tax imposed under this part.

(3) For purposes of determining the applicable ratios described in subdivisions (c) and (d), the inclusion or exclusion of items of investment income to prevent distortion causing significant reduction in those ratios.

SEC. 3. Section 24425 of the Revenue and Taxation Code is amended to read:

24425. (a) No deduction shall be allowed for any amount otherwise allowable as a deduction which is allocable to one or more classes of income not included in the measure of the tax imposed by this part, regardless of whether that income was received or accrued during the taxable year.

(b) No deduction shall be allowed for any expense described in paragraphs (1) or (2) that is paid or incurred to an insurer if the insurer is a member of the taxpayer's commonly controlled group and the amount paid or incurred would constitute income to the insurer if the insurer were subject to the California income or franchise tax.

(1) An expense described in this paragraph means any of the following interest amounts payable to an insurer in the same commonly controlled group:

(A) (i) Interest paid or incurred to an insurer in the taxpayer's commonly controlled group with respect to indebtedness (other than qualified marketable debt instruments), the principal amount of which is attributable to a contribution of money by a noninsurer member of the taxpayer's commonly controlled group to the capital of an insurer member of that group, including the principal amount of a loan arising from a direct or indirect transfer of money from that contribution to capital from one insurer to another insurer of the same commonly controlled group.

(ii) Interest paid or incurred to an insurer with respect to a note or other debt instrument (other than qualified marketable debt instruments) contributed to the capital of an insurer with respect to its stock by a noninsurer member of the commonly controlled group.

(iii) For purposes of this subparagraph, ''qualified marketable debt instruments'' means publicly available debt instruments of all noninsurer members of the commonly controlled group issued, but only to the extent that the aggregate principal amount of publicly available

debt instruments held by all insurer members of the commonly controlled group constitutes less than 10 percent of the total outstanding principal amount of publicly available debt instruments issued by all noninsurer members.

(iv) For purposes of this subparagraph, ''publicly available debt instruments'' means debt instruments available to the general public, including bonds, debentures, and negotiable instruments (as defined in Section 3104 of the California Commercial Code) that are rated by a nationally recognized statistical rating agency (as that term is used in Rule 15c3-1(c)(2)(vi)(F) under the Securities Exchange Act of 1934) in one of its generic rating categories that signifies investment grade.

(B) Interest paid or incurred within five years after the direct or indirect acquisition of the insurer by a member of the commonly controlled group (other than interest on qualified marketable debt instruments as defined in clause (iii) of subparagraph (A)).

(C) The amount of interest paid or incurred during the taxable year to any insurer in the commonly controlled group multiplied by the disqualifying percentage. The disqualifying percentage is an amount equal to 100 percent less the percentage described in paragraph (1), (2), or (3) of subdivision (c) of Section 24410 (as the case may be) for that taxable year whether or not a dividend is paid or accrued.

(D) An amount of interest determined by multiplying the amount of interest paid or incurred to an insurer in the commonly controlled group by the ratio of the commonly controlled group determined under paragraph (1) of subdivision (d) of Section 24410 for the taxable year (whether or not a dividend was paid or accrued in that year).

(2) An expense described in this paragraph means any expense other than interest described by paragraph (1), that is either of the following:

(A) Attributable to property formerly held by the taxpayer or a member of the taxpayer's commonly controlled group that was acquired by the insurer in a transaction in which gain was realized but not recognized (including for this purpose any income deferred under Section 24465) by the taxpayer or a member of its commonly controlled group.

(B) Attributable to property purchased with the proceeds attributable to a contribution by a noninsurer member of the taxpayers' commonly controlled group to the capital of an insurer member of that group, including amounts attributable to a direct or indirect transfer of money from that contribution from one insurer to another insurer in the same group.

(3) For purposes of this subdivision, amounts that are described in more than one subparagraph of either paragraph (1) or (2) shall be included only in that subparagraph that will result in the highest disallowance amount.

(4) For purposes of this subdivision, the phrase ''commonly controlled group'' shall have the same meaning as that phrase has under Section 25105.

(5) For purposes of this subdivision, an insurer is an insurer within the meaning of Section 28 of Article XIII of the California Constitution, whether or not the insurer is engaged in business in California.

SEC. 4. Section 24465 is added to the Revenue and Taxation Code, to read:

24465. (a) (1) If, in connection with any exchange described in Section 332, 351, 354, 356, or 361 of the Internal Revenue Code, a taxpayer transfers property to an insurer, the insurer shall not, for purposes of determining the extent to which gain shall be recognized on that transfer, be considered to be a corporation for purposes of this part.

(2) Paragraph (1) shall not apply to any of the following types of transactions, unless that transaction has the effect (directly or indirectly) of transferring appreciated property from a taxpayer subject to tax under this part (or a member of the taxpayer's combined reporting group) to an insurer:

(A) An exchange or transfer pursuant to Section 368(a)(2)(D) or Section 368(a)(2)(E) of the Internal Revenue Code.

(B) A transfer of stock in an 80 percent-owned insurer for the purpose of filing a consolidated tax return or for financial or regulatory reporting.

(C) A transfer or exchange of publicly owned stock of the parent corporation.

(3) If a transaction described in paragraph (2) would qualify under that paragraph but for the fact that the transaction has the effect (directly or indirectly) of transferring appreciated property from a taxpayer subject to tax under this part (or a member of the taxpayer's combined reporting group) to an insurer, then, if the property is used in the active trade or business of the insurer, subdivision (b) shall be deemed to apply to that transfer.

(4) For purposes of this subdivision, ''appreciated property'' means property whose fair market value, as of the date of the transfer subject to this section, exceeds its adjusted basis as of that date.

(b) (1) Except as provided in subdivision (c), or as otherwise provided by regulations prescribed by the Franchise Tax Board, if property subject to paragraph (1) of subdivision (a) or to subdivision (g) is transferred to an insurer for use in the active conduct of a trade or business of the insurer, then any gain otherwise required to be recognized under that subdivision shall be deferred until the date that the property is no longer owned by an insurer in the taxpayer's commonly controlled group (or a member of the taxpayer's combined reporting group), or the property is no longer used in the active conduct of the insurer's trade or business (or the trade or business of another member in the taxpayer's

combined reporting group), or the holder of the property is no longer held by an insurer in the commonly controlled group of the transferor (or a member of the taxpayer's combined reporting group).

(2) Any of the events described in paragraph (1) shall be treated as a disposition of the property under this subdivision, irrespective of whether any other provision in this part or in the Internal Revenue Code would otherwise permit nonrecognition treatment of the transaction described in this subdivision.

(3) Notwithstanding paragraph (2) of this subdivision, an insurer that becomes a member of the taxpayer's commonly controlled group or a corporation that becomes a member of the taxpayer's combined reporting group, as a result of a transaction of which a transfer referred to in this subdivision is a part, shall be treated as a member of the taxpayer's commonly controlled group or a member of the taxpayer's combined reporting group at the time of the transfer for purposes of this subdivision.

(4) For purposes of this subdivision, stock of an insurance subsidiary constitutes property used in the active trade or business of the insurer.

(5) If the deferred gain required to be taken into account under this subdivision is business income (as defined by subdivision (a) of Section 25120), the gain shall be apportioned using the apportionment percentage for the taxable year that the gain is required to be taken into account under this subdivision. Except as provided in regulations under Section 25137, for purposes of the sales factor for that taxable year, the transaction giving rise to that gain shall be treated as a sale occurring in the taxable year the gain is taken into account. The amount of any gain required to be recognized under this subdivision upon any disposition described in this subdivision shall not exceed the lesser of the deferred gain or the gain realized in the transaction in which gain is required to be recognized under this subdivision.

(6) For purposes of computing the amount of gain required to be recognized under this subdivision, appropriate adjustments may be made, pursuant to regulations issued by the Franchise Tax Board, to the basis of stock to reflect the disallowance of any expenses under paragraph (2) of subdivision (b) of Section 24425.

(c) The Franchise Tax Board may prescribe regulations providing for an annual reporting requirement in the form of a statement or other form, to be attached to the transferor taxpayer's return, regarding the current ownership of any property for which any gains were previously deferred pursuant to subdivision (b). If the transferor taxpayer fails to provide any information required by the Franchise Tax Board pursuant to the preceding sentence, the Franchise Tax Board may, in lieu of the year described by subdivision (b), require that the transferor taxpayer take those gains into account in the first taxable year in which the current

ownership of the property is not reported. The preceding sentence shall not apply so long as the property is still owned by the transferee and the failure to provide the information was due to reasonable cause and not willful neglect. Notwithstanding any other provision of law, if a taxpayer fails to satisfy the reporting requirements of this subdivision, then a notice of proposed deficiency assessment resulting from adjustments attributable to gains previously deferred pursuant to subdivision (b) with respect to which the reporting requirements were not satisfied may be mailed to the taxpayer within four years from the date on which the reporting requirements are satisfied by the taxpayer.

(d) Subdivision (b) shall not apply to any property described by Section 367(a)(3)(B) of the Internal Revenue Code.

(e) Except as provided by regulations prescribed by the Franchise Tax Board, a transfer by a taxpayer of an interest in a partnership to an insurer in a transaction described in subdivision (a) shall be treated as a transfer to that insurer of the taxpayer's pro rata share of the assets of the partnership.

(f) For purposes of this section, any distribution described by Section 355 of the Internal Revenue Code (or so much of Section 356 of the Internal Revenue Code as it relates to Section 355 of the Internal Revenue Code) shall be treated as an exchange under this section, whether or not the distribution is an exchange. This subdivision shall not apply to any distribution in which either of the following applies:

(1) The distributing corporation is an insurer.

(2) The distributee is a person other than an insurer.

(g) For purposes of this part, any transfer of property to an insurer as a contribution to capital of that insurer by one or more persons who, immediately after the transfer, own (within the meaning of Section 318 of the Internal Revenue Code) stock possessing at least 80 percent of the total combined voting power of all classes of stock of that insurer that are entitled to vote shall be treated as an exchange of that property for stock of the insurer equal in value to the fair market value of the property transferred.

(h) (1) In the case of any distribution described in Section 355 of the Internal Revenue Code (or so much of Section 356 of the Internal Revenue Code as it relates to Section 355 of the Internal Revenue Code) by a taxpayer to an insurer, to the extent provided in regulations prescribed by the Franchise Tax Board, gain shall be recognized under principles similar to the principles of this section.

(2) In the case of any liquidation to which Section 332 of the Internal Revenue Code applies, except as provided in regulations prescribed by the Franchise Tax Board, both of the following shall apply:

(A) Sections 337(a) and 337(b)(1) of the Internal Revenue Code shall not apply, where the 80 percent distributee is an insurer.

(B) Where the distributor is an insurer, the distributee shall treat the distribution as a distribution from the insurer's earnings and profits, to the extent thereof.

(3) For purposes of the preceding paragraph, the deemed distribution from earnings and profits shall be treated as a dividend eligible for a deduction, to the extent otherwise provided in Section 24410, as if actually distributed as a dividend.

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

(1) An insurer is any insurer within the meaning of Section 28 of Article XIII of the California Constitution, whether or not the insurer is engaged in business in California.

(2) The phrase ''commonly controlled group'' shall have the same meaning as that phrase has under Section 25105.

(3) The phrase ''combined reporting group'' means those corporations whose income is required to be included in the same combined report pursuant to Section 25101 or 25110.

(j) The Franchise Tax Board may prescribe any regulations that may be appropriate to carry out the purpose of this section, which purpose is to prevent the removal of gain inherent in property at the time of a transfer from taxation under this part. Those regulations may provide for appropriate adjustments to the amount of deferred income described in subdivision (b) to avoid the double inclusion of income for situations, including but not limited to, the property transferred to an insurer member of the commonly controlled group is later acquired by a noninsurer member of the taxpayer's combined reporting group.

(k) Upon an adequate showing by a taxpayer that a transaction referred to in subdivision (a) or (h) would not violate the purposes of this section to prevent the removal of gain inherent in property at the time of a transfer from taxation under this part, the Franchise Tax Board may grant relief from the application of this section. In an appeal filed with the State Board of Equalization, or an action filed under Section 19382 or 19385, the State Board of Equalization or the court, as the case may be, shall have jurisdiction to grant that relief only upon a specific finding that the transfer did not remove gain inherent in property at the time of transfer from taxation under this part.

(*l*) This section applies to transactions entered into on or after June 23, 2004, or transactions entered into after June 23, 2004, pursuant to a binding written contract in existence on June 23, 2004. For purposes of this subdivision, transactions entered into on or after June 23, 2004, that were given final approval by a regulatory insurance commissioner before June 23, 2004, shall be considered a transaction entered into before June 23, 2004, pursuant to a binding written contract in existence on June 23, 2004.

SEC. 5. Section 24900 is added to the Revenue and Taxation Code, to read:

24900. (a) The Franchise Tax Board may include in the gross income of the taxpayer (or a member of the taxpayer's combined reporting group) in that taxable year the taxpayer's pro rata share (or the pro rata share of a member of the taxpayer's combined reporting group) of any of those insurers' current earnings and profits in that taxable year, but not to exceed an amount equal to the specific insurer's net income attributable to investment income for that year minus that insurer's net written premiums received in that same taxable year, if all of the following apply:

(1) For any taxable year an insurer is a member of a taxpayer's commonly controlled group.

(2) The ratio of the five-year average net written premiums to the five-year average total income of all insurers in the commonly controlled group is equal to or less than 0.10 (or, for taxable years beginning on or after January 1, 2008, 0.15).

(3) The accumulation of earnings and profits of the insurers in the commonly controlled group had a substantial purpose of avoidance of taxes on, according to, or measured by income, of this state or any other state.

The amount so included shall be treated as a dividend received from an insurance company during the taxable year, and to the extent applicable, Section 24410 shall apply to that amount.

(b) If the insurer members of the commonly controlled group constitute a predominantly captive insurance group (as defined in paragraph (6) of subdivision (e)), then the ratio described in subdivision (a) shall be 0.40.

(c) To the extent that amounts are included in the gross income of a taxpayer (or a member of the taxpayer's combined reporting group) pursuant to subdivision (a), those amounts shall not again be considered as investment income in the application of the ratio described in paragraph (2) of subdivision (a).

(d) The amounts included in gross income under subdivision (a) shall not again be included in gross income when subsequent distributions are made to the taxpayer (or a member of the taxpayer's combined reporting group), or another taxpayer that acquires an interest in the stock of the taxpayer (or a member of the taxpayer's combined reporting group with respect to which subdivision (a) was applied), or any successor or assign of the respective taxpayers (or a member of the taxpayer's combined reporting group) described in this subdivision. For purposes of applying this subdivision, distributions from an insurer shall be considered first made from amounts included under subdivision (a).

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

(1) Except as otherwise provided, the phrases ''net written premiums,'' ''five-year average net written premiums'' and the ''five-year average total income'' shall each have the same meaning, respectively, as applicable for purposes of subdivision (c) of Section 24410, whether or not a dividend is actually received from any insurer member of the taxpayer's commonly controlled group in that taxable year.

(2) ''Net income attributable to investment income'' means net income of the insurer multiplied by a ratio, the numerator of which is the insurer's gross investment income from interest, dividends (other than dividends from members of the taxpayer's commonly controlled group), rent, and realized gains or losses, and the denominator of which is the insurer's gross income (other than dividends from members of the taxpayer's commonly controlled group) from all sources. In the application of the preceding sentence, if an insurer is required to file a Statutory Annual Statement pursuant to the Annual Statement Instructions and Accounting Practices and Procedures Manual promulgated by the National Association of Insurance Commissioners, ''net income'' means net income required to be reported in the insurer's Statutory Annual Statement.

(3) An insurer is any insurer within the meaning of Section 28 of Article XIII of the California Constitution, whether or not the insurer is engaged in business in California.

(4) The phrase ''commonly controlled group'' shall have the same meaning as that phrase has under Section 25105.

(5) The phrase ''combined reporting group'' means those corporations whose income is required to be included in the same combined report pursuant to Section 25101 or 25110.

(6) A ''predominantly captive insurance group'' means the insurer members of a commonly controlled group where the insurers receive more than 50 percent of their net written premiums (without regard to the weighting factors in paragraph (1) of subdivision (e) of Section 24410) from members of the commonly controlled group or the ratios in clause (i) or clause (ii) of subparagraph (B) of paragraph (1) of subdivision (d) of Section 24410 is greater than 50 percent. The provisions of paragraph (4) of subdivision (d) of Section 24410 shall apply for purposes of this paragraph.

(7) (A) The taxpayer's ''pro rata share'' of the current earnings and profits of an insurer member of a commonly controlled group is the amount that would have been received as a dividend by the taxpayer (or a member of the taxpayer's combined reporting group) if both of the following apply:

(i) The insurer had directly distributed its current earnings and profits with respect to its stock held by the taxpayer (or member of the taxpayer's combined reporting group).

(ii) In the case of an insurer holding the stock of another insurer, all other insurer members of the taxpayer's commonly controlled group had distributed the same current earnings and profits with respect to their stock, in the same taxable year, until amounts were received as a dividend by the taxpayer (or a member of the taxpayer's combined reporting group) from an insurer member of the commonly controlled group.

(B) In the application of this section, amounts treated as a dividend received by a partnership shall be considered a dividend received by each partner that is a member of the commonly controlled group, either directly or through a series of tiered partnerships.

(f) The Franchise Tax Board may prescribe those regulations that are appropriate to describe conditions under which the accumulation of earnings and profits of those insurers described in paragraph (2) of subdivision (a) do not have the substantial purpose of avoidance of taxes on, according to, or measured by income, of this state or any other state.

(g) If this section or any portion of this section is held invalid, or the application of this section to any person or circumstance is held invalid, that invalidity shall not affect other provisions of the act adding this section, or the provisions of this section that are severable.

SEC. 6. (a) The Legislature finds and declares that the changes made by this act with respect to Section 24410 of the Revenue and Taxation Code serve a public purpose and are necessary to provide for the equitable tax treatment of insurance company dividends in light of the following circumstances:

(1) The California Court of Appeal in a final decision in the case of Ceridian Corp. v. Franchise Tax Board (2000) 85 Cal.App.4th 875 held that provisions of Section 24410 of the Revenue and Taxation Code that limited a deduction with respect to dividends received from subsidiaries engaged in the insurance business to corporations ''commercially domiciled'' in California, and to insurance company dividends paid from ''income from California sources,'' violated the commerce clause of the United States Constitution.

(2) In general, insurance companies are not subject to the Corporation Tax Law (Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code) and cannot be included in the combined report used to determine the California income of related corporations that are subject to the Corporation Tax Law. Consequently, dividends that are paid by insurance companies do not qualify for a deduction under Section 24402 of the Revenue and Taxation Code and are not eligible for

elimination from income as provided for in Section 25106 of the Revenue and Taxation Code.

(3) After the decision in Ceridian Corp. v. Franchise Tax Board, a number of corporations filed returns with the Franchise Tax Board in which they claimed deductions for all or part of the dividends that they received from insurance subsidiaries. It is the position of these corporations that the Ceridian Corp. v. Franchise Tax Board decision results in a 100 percent deduction for any dividend received from any insurance company. It is the position of the Legislative Counsel and the Franchise Tax Board that the Ceridian Corp. v. Franchise Tax Board decision makes Section 24410 of the Revenue and Taxation Code inoperable, and that no deduction is allowed for dividends received from an insurance company. If the corporations are not entitled to those deductions claimed with respect to those dividends, additional taxes and interest will be due.

(4) The Legislature finds and declares that the changes made by this act with respect to Section 24410 of the Revenue and Taxation Code serve a public purpose and are in furtherance of the public interest in avoiding the denial of a deduction with respect to a portion of the dividends paid by insurance companies. Denial of a deduction with respect to those dividends will have a detrimental effect upon the economy of California.

(5) The Legislature further finds and declares that the application of this act to taxable years ending on or after December 1, 1997, and beginning before January 1, 2004, serves a public purpose and is in furtherance of legislative intent underlying the enactment of Section 24410 of the Revenue and Taxation Code. The Legislature further finds and declares that the application of the changes made with respect to Section 24410 of the Revenue and Taxation Code made by this act promote a public purpose and sound tax policy by affording equitable tax relief to many taxpayers who relied upon the literal language of Section 24410 of the Revenue and Taxation Code in the expectation that they would be entitled to a deduction with respect to a portion of the dividends received from insurance companies.

(b) The Legislature further finds and declares all of the following:

(1) Section 24425 of the Revenue and Taxation Code denies a deduction with respect to any amount otherwise allowable as a deduction that is allocable to a class of income that is not included in the measure of tax. In general, the Franchise Tax Board maintains, and the State Board of Equalization has upheld, that Section 24425 of the Revenue and Taxation Code applies to limit expense deductions associated with insurance company dividends to the extent those dividends are deductible under Section 24410 of the Revenue and Taxation Code. Some taxpayers contend that Section 24425 of the Revenue and Taxation

Code does not apply to a deduction arising under Section 24410 of the Revenue and Taxation Code under any circumstance.

(2) The determination of the amount of an otherwise allowable deduction that is allocable to a class of income that is not included in the measure of tax can be a difficult and subjective judgment and often is not resolved without litigation.

(3) Paragraph (5) of subdivision (b) of Section 24410 of the Revenue and Taxation Code, that declares Section 24425 of the Revenue and Taxation Code inapplicable to the dividends received deduction for tax years ending on or after December 1, 1997, and commencing before January 1, 2004, represents an integral part of the legislative resolution of the uncertainty created by the Ceridian Corp. v. Franchise Tax Board decision, and is accordingly added by this act in furtherance of the same valid public purposes identified above.

(4) For tax years ending prior to December 1, 1997, however, the Ceridian Corp. v. Franchise Tax Board decision has required a full dividends received deduction under Section 24410 of the Revenue and Taxation Code for taxpayers procedurally entitled to assert a claim for refund thereto, and the Franchise Tax Board maintains that Section 24425 of the Revenue and Taxation Code applies to limit deductions allocable to these dividends. No inferences should arise from the provisions of subdivision (b) of Section 24410 of the Revenue and Taxation Code as added by this act with respect to the application of Section 24425 of the Revenue and Taxation Code to deductions allocable to the dividends deductible under Section 24410 of the Revenue and Taxation Code for tax years ending before December 1, 1997, or commencing on or after January 1, 2004.

(c) The Legislature further declares that the tax treatment of insurance company dividends under Section 24410 of the Revenue and Taxation Code, as amended by this act, is unrelated to and distinguishable from the tax treatment of general corporation dividends under Section 24402 of the Revenue and Taxation Code and from the application of Section 24425 of the Revenue and Taxation Code to deductions allocable to those dividends. The Legislature further finds and declares that no inference with respect to Section 24402 of the Revenue and Taxation Code or the application of Section 24425 of the Revenue and Taxation Code to deductions allocable to those dividends should be drawn from the changes made with respect to Section 24410 of the Revenue and Taxation Code by this act.

SEC. 7. (a) The Legislative Analyst, in consultation with the Department of Finance, the Department of Insurance, and the Franchise Tax Board, shall conduct a study of this act's impact on the income and franchise tax under Part 11 resulting from overcapitalization of insurance companies and the fact that income from overcapitalization of

an insurance company is exempt from the tax imposed under the Corporation Tax Law (Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code) by virtue of subdivision (f) of Section 28 of Article XIII of the California Constitution. The Legislative Analyst's Office may consult with the insurance industry to obtain necessary information and data. The report shall be submitted to the Legislature no later than January 1, 2008, and shall include, but not be limited to, the impact of new Section 24900 of the Revenue and Taxation Code on taxpayers' ability to avoid state franchise or income tax through the ownership of an insurance company. The report shall address whether the ratio described in paragraph (2) of subdivision (a) of Section 24900 of the Revenue and Taxation Code should be decreased from 0.15 (as effective for years beginning on or after January 1, 2008) to 0.10 on the basis that the problems related to overcapitalization of insurance companies that were targeted by Section 24900 of the Revenue and Taxation Code have and will have been adequately curtailed by reducing the ratio specified in paragraph (2) of subdivision (a) of Section 24900 of the Revenue and Taxation Code to 0.10. The study shall also address the amount of gross premiums taxes paid by the insurance industry and compare the method of collection and amount of payment to the corporation income or franchise tax.

(b) Unless the report referred to in subdivision (a) demonstrates that the ratio referred to in paragraph (2) of subdivision (a) of Section 24900 of the Revenue and Taxation Code at the level of 0.10 is or was insufficient to curtail the excessive capitalization of insurance companies that was targeted by Section 24900 of the Revenue and Taxation Code, the Legislature would urge the enactment of legislation to reduce the ratio described in paragraph (2) of subdivision (a) of Section 24900 of the Revenue and Taxation Code from 0.15 to 0.10.

SEC. 8. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 869

An act to add and repeal Section 33334.30 of the Health and Safety Code, relating to redevelopment.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 2004.]

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

SECTION 1. Section 33334.30 is added to the Health and Safety Code, to read:

33334.30. (a) The Legislature finds and declares all of the following:

(1) The transfer of funds to a joint powers authority and the use of pooled funds within the housing market area of the County of San Mateo, within one-third of a mile of the Peninsula Corridor Joint Powers Authority right-of-way, on property provided by the San Mateo County Transit Authority for the purpose of providing affordable housing that is of benefit to the project area producing the tax increment.

(2) The cooperation of local agencies and the use of pooled funds will result in more resources than would otherwise be available for affordable housing.

(b) Notwithstanding any other provision of law, an agency of a community within San Mateo County that has a housing element certified by the Department of Housing and Community Development and has met 40 percent of its very low and low-income housing needs may create and participate in a joint powers authority for the purpose of pooling low- and moderate-income housing funds for affordable housing uses pursuant to this section. No participating agency may transfer in any fiscal year more than 25 percent of the tax increment that is deposited into the Low and Moderate Income Housing Fund to a joint powers authority for use by the joint powers authority pursuant to this section. The joint powers authority may determine the kinds of housing projects or activities to be assisted, consistent with this section. The joint powers authority may loan, grant, or advance transferred housing funds from participating agencies to a receiving entity for any eligible housing development within the territorial jurisdiction of a participating agency in San Mateo County on property provided by the San Mateo County Transit District, the San Mateo County Transportation Authority, or the Peninsula Corridor Joint Powers Authority and located within one-half of a mile of the San Mateo County Transit District, the San Mateo County Transportation Authority, or the Peninsula Corridor Joint Powers Authority right-of-way, subject to the requirements of this section. In addition, the agreement may authorize the joint powers authority to issue bonds and to use the pooled funds to leverage other funds to assist eligible developments, including loans from private institutions and assistance provided by other governmental agencies.

(c) Each of the following conditions shall be met and described in a mutually binding agreement between the joint powers authority and each participating agency:

(1) The community of each participating agency shall have adopted an up-to-date housing element pursuant to Article 10.6 (commencing with Section 65580) of Division 1 of Title 7 of the Government Code, that has been determined to be in substantial compliance with the law by the Department of Housing and Community Development.

(2) The community of each participating agency shall have met, in its current or previous housing element cycle, 40 percent or more of its share of the region's affordable housing needs, as defined in Section 65584 of the Government Code, in each of the very low and lower income categories of income groups defined in Section 50025.5.

(3) Each participating agency shall hold, at least 45 days prior to the transfer of funds to the joint powers authority, a public hearing, after providing notice pursuant to Section 6062 of the Government Code to solicit public comments on the draft agreement.

(4) No housing funds shall be transferred from a project area that has indebtedness to its Low and Moderate Income Housing Fund pursuant to Section 33334.6.

(5) No housing funds shall be transferred from an agency that has not met its need for replacement housing pursuant to Section 33413, unless the agency has encumbered and contractually committed sufficient funds to meet those requirements.

(6) Pooled funds shall be used within the territorial jurisdiction of a participating agency within the County of San Mateo, within one-half of a mile of the San Mateo County Transit District, the San Mateo County Transportation Authority, or the Peninsula Corridor Joint Powers Authority right-of-way on property provided by any of these entities.

(7) The agreement shall require compliance by the joint powers authority with the provisions of this section.

(8) The joint powers authority shall ensure that the funds it receives are used in accordance with this section.

(9) Funds transferred by an agency to a joint powers authority pursuant to this section shall be expended or encumbered by the joint powers authority for the purposes of this section within two years of the transfer. Transferred funds not so expended or encumbered by the joint powers authority within two years after the transfer shall be returned to the original agency and shall be deemed excess surplus funds as provided in, and subject to, the requirements of Sections 33334.10 and 33334.12. Excess surplus funds held by an agency may not be transferred to a joint powers authority.

(10) The joint powers authority shall prepare and submit an annual report to the department that documents the amount of housing funds received and expended or allocated for specific housing assistance activities consistent with Section 33080.4.

(d) Each of the following conditions shall be met and described in a mutually binding contract between the joint powers authority and a receiving entity:

(1) Pooled housing funds may only be used to pay for the direct costs of constructing, substantially rehabilitating, or preserving the affordability of housing units that are affordable to very low or low-income households. Units assisted with pooled funds shall remain available at affordable housing costs in accordance with subdivision (f) of Section 33334.3.

(2) Except as provided in this section, pooled housing funds may not be used in any way that is inconsistent with the requirements of Section 33334.3. Pooled housing funds may not be used to pay for planning and administrative costs, offsite improvements associated with a housing project, or fees or exactions levied solely for development projects constructed, substantially rehabilitated, or preserved with pooled funds. The receiving entity shall be subject to the same replacement requirements provided in Section 33413 and any relocation requirements applicable pursuant to Section 7260 of the Government Code.

(3) Pooled housing funds may not be used to construct a development in a census tract that currently has more than 50 percent of its population comprised of racial minorities or low-income families.

(4) The Department of Housing and Community Development has evaluated each proposed use of pooled funds to construct, substantially rehabilitate, or preserve the affordability of housing and determined that the proposed use is in compliance with this section. In considering whether a proposed use of funds will exacerbate racial or economic segregation, the department shall consider all of the following:

(A) The record of participating jurisdictions in meeting their share of the regional need for very low and low-income households allocated to the jurisdiction pursuant to Section 65584 of the Government Code.

(B) The distance of the proposed housing from a redevelopment area from which pooled funds originated.

(C) The income and ethnicity of the residents of the census tract from which the pooled funds originated and in which the housing will be located.

(D) The housing need and availability of sufficient sites for housing within jurisdictions from which pooled funds originated.

(e) As used in this section, the following terms shall apply:

(1) ''Housing funds'' mean funds in or from the low- and moderate-income housing fund established by an agency pursuant to Section 33334.3.

(2) ''Joint powers authority'' means a joint powers authority created pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of

Title 1 of the Government Code for the purposes of receiving and using housing funds pursuant to this section.

(3) ''Receiving entity'' means any person, partnership, joint venture, corporation, governmental body, or other organization receiving housing funds from a joint powers authority for the purpose of providing housing pursuant to this section.

(f) On or after January 1, 2009, no participating agency shall create a new joint powers authority or transfer funds to an existing joint powers authority pursuant to this section, unless a later enacted statute, which is enacted before January 1, 2009, deletes or extends that date.

(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 on or before January 1, 2010, deletes or extends that date.

CHAPTER 870

An act to amend Section 12715 of, and to add Section 12715.5 to, the Government Code, relating to gaming.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 2004.]

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

SECTION 1. 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) Except as provided in Section 12715.5, 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 tribal 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 tribal lands on all sides.

(B) Whether the local government jurisdiction partially borders tribal 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) 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.

(1) 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.

(2) Grants shall be subject to the sponsorship of the tribe that operates the particular Indian gaming facility and the recommendations of the Indian Gaming Local Community Benefit Committee for that county.

(f) 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).

(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.

SEC. 2. Section 12715.5 is added to the Government Code, to read:

12715.5. In San Diego County, the Indian Gaming Local Community Benefit Committee shall be comprised of seven representatives, consisting of the following:

(a) Two representatives from the county, selected by the county board of supervisors.

(b) One elected representative from the city located within four miles of a tribal casino in the county, selected by the county board of supervisors.

(c) Three representatives selected upon the recommendation of a majority of the tribes paying into the Indian Gaming Special Distribution Fund in the county.

(d) The sheriff of San Diego County.

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 the method of composing the Indian Gaming Local Community Benefit Committee provided in Section 12715 of the Government Code does not appropriately apportion representation in San Diego County where only one city meets the requirements of the section and the three

tribes in the county that are paying into the Special Distribution Fund would not be adequately represented.

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

CHAPTER 871

An act to amend Sections 42243.7, 52904, 54686.2, and 58562 of, to amend and repeal Sections 37252.8, 37253, 42239.1, 42239.15, 48431.6, 48431.7, and 48644.5 of, to amend, repeal, and add Section 42239 of, to add Sections 18185, 32228.6, 32296.10, 42289.6, 44579.6, 47774, 48642, 52002, 52891, 53032, 53095, 54206, 54669, 54735, 54763, and 58737 to, and to add Chapter 3.2 (commencing with Section 41500) to Part 24 of, the Education Code, relating to education finance.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 2004.]

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

SECTION 1. (a) It is the intent of the Legislature to accomplish all of the following:

(1) Address the continuing concerns regarding the fragmentation of supplementary funding sources and the need for flexibility in order to respond to the special needs of all pupils.

(2) Refocus attention on the effect that the expenditure of categorical program funds has on pupil learning rather than on state spending and compliance with operational rules for categorical programs.

(3) Improve school performance by doing the following:

(A) Provide schools increased flexibility in the use of available funds in exchange for accountability.

(B) Ensure that funds intended for services to disadvantaged pupils and schools are expended for their stated purpose.

(C) Ensure that local governing boards develop and adopt the highest possible standards for pupils. The standards shall be as rigorous as current state standards and any that may be adopted pursuant to subsequent legislation.

(b) It is the intent of the Legislature to accomplish the goals set forth in subdivision (a) by establishing block grants to be composed of funding for certain current categorical education programs.

SEC. 2. Section 18185 is added to the Education Code, to read:

18185. This article 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. 3. Section 32228.6 is added to the Education Code, to read:

32228.6. This article 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. 4. Section 32296.10 is added to the Education Code, to read:

32296.10. This article shall become inoperative on July 1, 2007, and, as of January 1, 2008, is repealed, unless a later enacted statute that is enacted before January 1, 2008, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 5. Section 37252.8 of the Education Code is amended to read:

37252.8. (a) The governing board of each district maintaining any or all of grades 2 to 6, inclusive, and any charter school, may offer programs of direct, systematic, and intensive supplemental instruction to pupils enrolled in grades 2 to 6, inclusive, who meet either of the following criteria:

(1) Pupils who have been identified as having a deficiency in mathematics, reading, or written expression based on the results of the tests administered under the Standardized Testing and Reporting Program established pursuant to Article 4 (commencing with Section 60640) of Chapter 5 of Part 33.

(2) Pupils who have been identified as being at risk of retention pursuant to Section 48070.5.

(b) Supplemental educational services offered pursuant to this section may be offered during the summer, before school, after school, on Saturdays, or during intersession, or in a combination of summer school, before school, after school, Saturday, or intersession instruction. Services shall not be provided during the pupil's regular instructional day. Any minor pupil whose parent or guardian informs the school district that the pupil is unable to attend a Saturday school program for religious reasons, or any pupil 18 years of age or older who states that he or she is unable to attend a Saturday school program for religious reasons, shall be given priority for enrollment in supplemental instruction offered at a time other than Saturday, over a pupil who is not unable to attend a Saturday school program for religious reasons.

(c) For purposes of this section, a pupil shall be considered to be enrolled in a grade immediately upon completion of the preceding grade. Summer school instruction may also be offered to pupils who were enrolled in grade 6 during the prior school year.

(d) An intensive remedial program in reading or written expression offered pursuant to this section shall, as needed, include instruction in phoneme awareness, systematic explicit phonics and decoding, word attack skills, spelling and vocabulary, explicit instruction of reading comprehension, writing, and study skills.

(e) Each school district or charter school shall seek the active involvement of parents and classroom teachers in the development and implementation of supplemental instructional programs provided pursuant to this section.

(f) It is the intent of the Legislature that pupils who are at risk of failing to meet state adopted standards, or who are at risk of retention, be identified as early in the school year, and as early in their school careers as possible and be provided the opportunity for supplemental instruction sufficient to assist them in attaining expected levels of academic achievement.

(g) (1) A school district or charter school that offers instruction pursuant to this section shall be entitled to receive reimbursement in an amount up to 5 percent of the district's or charter school's total enrollment in grades 2 to 6, inclusive, for the prior fiscal year multiplied by 120 hours, multiplied by the hourly rate for the current fiscal year determined pursuant to subdivision (c) of Section 42239.

(2) The balance of the appropriation made for the purposes of funding programs offered pursuant to this section to serve pupils in grades 2 to 6, inclusive, shall be allocated for reimbursement of pupil attendance in instruction pursuant to subdivision (a) that is in excess of 5 percent, but not in excess of 7 percent, of the district's enrollment for the prior year in grades 2 to 6, inclusive, multiplied by 120 hours, multiplied by the hourly rate for the current fiscal year determined pursuant to subdivision (c) of Section 42239.

(h) Notwithstanding any other provision of law, neither the State Board of Education nor the Superintendent of Public Instruction may waive any provision of this section.

(i) 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. 6. Section 37253 of the Education Code is amended to read:

37253. (a) The governing board of any school district and a charter school may offer supplemental instructional programs in mathematics,

science, or other core academic areas designated by the Superintendent of Public Instruction.

(b) The Superintendent of Public Instruction shall adopt rules and regulations necessary to implement this section, including, but not limited to, the designation of academic areas other than mathematics and science as core academic areas.

(c) The maximum entitlement of a school district or charter school for reimbursement for pupil hours of attendance in supplemental instructional programs offered pursuant to this section shall be an amount equal to 5 percent of the total enrollment of the school district or charter school for the prior fiscal year multiplied by 120 hours, multiplied by the hourly rate for the current fiscal year, as determined pursuant to subdivision (c) of Section 42239.

(d) To the extent appropriated funding allows, a school district or charter school may enroll more than 5 percent of its pupils, or may enroll pupils for more than 120 hours per year, in supplemental instructional programs offered pursuant to this section, if the total state apportionment to the district or charter school for these programs does not exceed an amount computed equal to 10 percent of the total enrollment of the school district or charter school for the prior fiscal year multiplied by 120 hours, multiplied by the hourly rate for the current fiscal year, as determined pursuant to subdivision (c) of Section 42239.

(e) Instructional programs may be offered pursuant to this section during the summer, before school, after school, on Saturday, or during intersession, or in any combination of summer, before school, after school, Saturday, or intersession instruction, but shall be in addition to the regular schoolday. Any minor pupil whose parent or guardian informs the school district that the pupil is unable to attend a Saturday school program for religious reasons, or any pupil 18 years of age or older who states that he or she is unable to attend a Saturday school program for religious reasons, shall be given priority for enrollment in supplemental instruction offered at a time other than Saturday, over a pupil who is not unable to attend a Saturday school program for religious reasons.

(f) Notwithstanding any other law, neither the State Board of Education nor the Superintendent of Public Instruction may waive compliance with any provision of this section.

(g) 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. 7. Chapter 3.2 (commencing with Section 41500) is added to Part 24 of the Education Code, to read:

CHAPTER 3.2. CATEGORICAL EDUCATION BLOCK GRANT FUNDING

Article 1. General Provisions

41500. (a) Notwithstanding any other provision of law, a school district and county office of education may expend in a fiscal year up to 15 percent of the amount apportioned for the block grants set forth in Article 3 (commencing with Section 41510), Article 5 (commencing with Section 41530), Article 6 (commencing with Section 41540), or Article 7 (commencing with Section 41570) for any other programs for which the school district or county office is eligible for funding, including programs whose funding is not included in any of the block grants established pursuant to this chapter. The total amount of funding a school district or county office of education may expend for a program to which funds are transferred pursuant to this section may not exceed 120 percent of the amount of state funding allocated to the school district or county office for purposes of that program in a fiscal year. For purposes of this subdivision, ''total amount'' means the amount of state funding allocated to a school district or county office for purposes of a particular program in a fiscal year plus the amount transferred in that fiscal year to that program pursuant to this section.

(b) A school district and county office of education shall not, pursuant to this section, transfer funds from Article 2 (commencing with Section 41505) and Article 4 (commending with Section 41520).

(c) Before a school district or county office of education may expend funds pursuant to this section, the governing board of the school district or the county board of education, as applicable, shall discuss the matter at a noticed public meeting.

(d) A school district shall continue to track transfers made pursuant to this section by using object code 8998 of the Standardized Account Code Structure.

41501. (a) The reduction made to categorical education program funding received by a basic aid school district pursuant to Section 38 of Chapter 227 of the Statutes of 2003 shall be deemed not to have occurred for purposes of calculating the amount of block grants a basic aid school district shall receive pursuant to this chapter.

(b) 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.

41502. By January 1, 2007, and subject to an appropriation in the annual Budget Act for this purpose, the Legislative Analyst's Office shall report and make recommendations on the effectiveness and distribution effects of this chapter on pupil achievement and

recommendations on the continuation or elimination of categorical education programs whose funding is not part of the block grants established pursuant to this chapter.

41503. The department shall annually compile and update information for each state and federal categorical education program, including the distribution of funds from each program to each school district and county office of education, in a form similar to the November 2003 audit of the department performed by the Bureau of State Audits.

Article 2. Pupil Retention Block Grant

41505. (a) There is hereby established the pupil retention block grant. Commencing with the 2005–06 fiscal year, the Superintendent of Public Instruction shall apportion block grant funds to a school district in the same relative statewide proportion that the school district received in the 2003–04 fiscal year for the programs listed in Section 41506.

(b) A school district may expend funds received pursuant to this article for any purpose authorized by the programs listed in Section 41506 as the statutes governing those programs read on January 1, 2004.

(c) For purposes of this article, ''school district'' includes a county office of education if county offices of education are eligible to receive funds for the programs that are listed in Section 41506. The block grant of a county office of education shall be based only on those programs for which it was eligible to receive funds in the 2003–04 fiscal year.

41505.5. The department shall make an initial allocation of funds to each local educational agency eligible for funding pursuant to this article. This initial allocation shall be 75 percent of the allocation for each local educational agency that is determined pursuant to Section 41505. The remaining portion of each district's allocation shall be made only after supplemental instruction provided under Sections 37252 and 37252.2 is fully funded as required pursuant to Section 42239. If the Superintendent of Public Instruction notifies the Director of Finance pursuant to paragraph (4) subdivision (c) of Section 42239 that there is a deficiency of funding for purposes of Sections 37252 and 37252.2, the Controller shall transfer from funding provided for purposes of this article any amounts needed to fully fund supplemental instruction provided under Sections 37252 and 37252.2. The transfer of funds pursuant to this section shall be to the item or items in the annual Budget Act that appropriate funds for supplemental instruction provided under Sections 37252 and 37252.2. If the amount of funds remaining after the initial 75 percent allocation is insufficient in any year to fully fund supplemental instruction provided pursuant to Sections 37252 and 37252.2, the amount of the remaining insufficiency shall be deducted

from funds appropriated for purposes of this article for the subsequent fiscal year.

41506. The pupil retention block grant shall include funding previously apportioned to school districts for purposes of the following programs:

(a) Supplemental instruction as set forth in Sections 37252.8 and 37253, Article 1 (commencing with Section 53025) of Chapter 16 and Chapter 18 (commencing with Section 53091) of Part 28. Notwithstanding any other provision of law, funding attributable to the programs identified in this subdivision shall be adjusted annually at both the statewide and local educational agency levels to reflect actual participation, and local educational agency funding eligibility shall not exceed the statutory limitations for these programs, as the statutes governing these programs read on January 1, 2004.

(b) Continuation high schools as set forth in Section 42243.7.

(c) High-Risk Youth Education and Public Safety as set forth in Part 26.95 (commencing with Section 47750).

(d) Tenth grade counseling as set forth in Sections 48431.6 and 48431.7.

(e) Opportunity programs as set forth in Article 1 (commencing with Section 48630) and Article 2.3 (commencing with Section 48643) of Chapter 4 of Part 27. The pupil retention block grant shall not include funding apportioned to county offices of education for opportunity schools and programs administered under Sections 48640 and 48641.

(f) Dropout prevention and recovery as set forth in Article 6 (commencing with Section 52890) and Article 7 (commencing with Section 52900) of Chapter 12 of Part 28, Article 3 (commencing with Section 54660) and Article 7 (commencing with Section 54720) of Chapter 9 of Part 29, and Chapter 3.5 (commencing with Section 58550) of Part 31. A school district that received funds pursuant to the programs listed in this subdivision in the 2003–04 fiscal year shall utilize funds received pursuant to this article to maintain at least the same number of outreach consultants as described in Section 52890 that were utilized by the school district in the 2004–05 fiscal year. A school district shall place consultants first in the school that has the highest percentage of pupils eligible for the federal free and reduced price lunch program. The school district shall then place consultants in the school with the next highest percentage of those pupils and continue in this manner until the school district places in its schools all the outreach consultants required to be placed pursuant to this section.

(g) Early intervention for school success as set forth in Article 4.5 (commencing with Section 54685) of Chapter 9 of Part 29.

(h) An at-risk youth program operated by the Los Angeles Unified School District that is funded pursuant to Item 6110-280-0001 of Section 2.0 of the annual Budget Act.

41507. A school district that receives funds pursuant to this article shall have a school level advisory committee as required pursuant to Chapter 6 (commencing with Section 52000) of Part 28, as that chapter read on January 1, 2004, and shall have a single school plan that incorporates the requirements of Sections 52014 and 52015, as those sections read on January 1, 2004.

41508. Commencing with the 2006–07 fiscal year, the amount of funding a school district receives pursuant to this article shall be adjusted for inflation by the amount calculated pursuant to Section 42238.1 and for growth as measured by the regular average daily attendance used to calculate the second principal apportionment for kindergarten and grades 1 to 12, inclusive.

Article 3. School Safety Consolidated Competitive Grant

41510. (a) There is hereby established the school safety consolidated competitive grant. Notwithstanding any other provision of law, commencing with the 2005–06 fiscal year, the Superintendent of Public Instruction, in partnership with the Attorney General's Office, shall distribute grant funds through a competitive process to school districts in order to carry out one or more of the purposes for which the programs listed in Section 41511 and Article 10.4 (commencing with Section 35294.10) of Chapter 2 of Part 21 were established, as the statutes governing those programs read on January 1, 2004. A grant may be made for up to a five-year period.

(b) If a school district has a school safety plan for each of the schools under its jurisdiction, a school district may expend funds received pursuant to this article subject to the parameters, conditions, or guidelines established by the Superintendent of Public Instruction and the Attorney General's office for this purpose. For purposes of this article, a school safety plan may be integrated into any single plan developed by a school.

(c) For purposes of this article, ''school district'' includes a county office of education if county offices of education are eligible to receive funds for the programs that are listed in Section 41511. The block grant of a county office of education shall be based only on those programs for which it was eligible to receive funds in the 2003–04 fiscal year.

41511. Funding for the school safety consolidated competitive grant shall include the funding previously apportioned to school districts for carrying out the purposes of the following programs:

(a) Safe school planning and partnership minigrants, as funded pursuant to Item 6110-226-0001 of Section 2.0 of the annual Budget Act.

(b) School community policing as set forth in Article 6 (commencing with Section 32296) of Chapter 2.5 of Part 19.

(c) Gang-risk intervention as set forth in Chapter 5.5 (commencing with Section 58730) of Part 31.

(d) Safety plans for new schools, as funded pursuant to Item 6110-226-0001 of Section 2.00 of the annual Budget Act.

(e) School community violence prevention, as funded pursuant to Item 6110-226-0001 of Section 2.00 of the annual Budget Act.

(f) Conflict resolution, as funded pursuant to Item 6110-226-0001 of Section 2.00 of the annual Budget Act.

41512. The Superintendent of Public Instruction shall work in partnership with the Office of the Attorney General to ensure proper and efficient distribution of grant funds to school districts in order to carry out one or more of the purposes for which the programs listed in Section 41511 and Article 10.4 (commencing with Section 35294.10) of Chapter 2 of Part 21 were established, as the statutes governing those programs read on January 1, 2004.

41513. The Superintendent of Public Instruction and the Attorney General's office shall adopt emergency regulations to implement this article as soon as possible.

41514. Funds appropriated for purposes of this article are available for encumbrance for five years from the date of appropriation.

Article 4. Teacher Credentialing Block Grant

41520. (a) There is hereby established the teacher credentialing block grant. Commencing with the 2005–06 fiscal year, the Superintendent of Public Instruction shall apportion block grant funds to a school district offering approved programs pursuant to Section 41521 based on the number of eligible participants in each of those programs.

(b) (1) The Legislature finds that the Superintendent of Public Instruction and the Commission on Teacher Credentialing established requirements for reviewing and approving teacher induction programs. The Legislature further finds that 135 of 150 programs are jointly approved as of July 1, 2004. It is the intent of the Legislature that these requirements remain in effect until the superintendent and commission jointly agree to modify them. The Superintendent of Public Instruction and the Commission on Teacher Credentialing shall jointly review new programs developed pursuant to paragraph (1) of subdivision (a) based on established approval requirements.

(2) As provided for in Section 44259, the Commission on Teacher Credentialing retains authority to issue credentials to candidates who complete an induction program that meets the Standards of Program Quality and Effectiveness adopted by the commission. A previously approved program that is deemed as no longer meeting the Standards of Program Quality and Effectiveness shall be considered a new program for purposes of becoming an approved program pursuant to this article.

(3) A school district may expend funds received pursuant to this article for any purpose authorized by the programs listed in Section 41521, as the statutes governing those programs read on January 1, 2004, for the purpose of providing equivalent program services for beginning teachers. For the purpose of statewide program support and accountability, equivalent program services include regional support and technical assistance that existed under the Beginning Teacher Support and Assessment system on January 1, 2004.

(c) For purposes of this article, ''school district'' includes a consortia of school districts, a consortia of school districts and county offices of education, and a county office of education if county offices of education are eligible to receive funds for the programs that are listed in Section 41521.

41521. (a) The teacher credentialing block grant shall include funding previously apportioned to school districts for purposes of beginning teacher support and assessment as set forth in Article 4.5 (commencing with Section 44279.1) of Chapter 2 of Part 25.

(b) For purposes of issuing teaching credentials, certificates, or other authorizations, the Commission on Teacher Credentialing shall approve the programs in paragraphs (1) and (2) of subdivision (a). To ensure the Superintendent of Public Instruction has the requisite information to allocate funding based on the number of participating credential candidates pursuant to this article, the commission shall inform the Superintendent of Public Instruction on an ongoing basis of the approval status of these programs and numbers of participating candidates in each approved program.

41522. Commencing with the 2006–07 fiscal year, the amount of funding a school district receives pursuant to this article shall be adjusted for inflation by the amount calculated pursuant to Section 42238.1 and for growth as measured by the regular average daily attendance used for the second principal apportionment for kindergarten and grades 1 to 12, inclusive.

Article 5. Professional Development Block Grant

41530. (a) There is hereby established the professional development block grant. Commencing with the 2005–06 fiscal year,

the Superintendent of Public Instruction shall apportion block grant funds to a school district based on the number of certificated teachers employed by the school district in the immediately prior fiscal year.

(b) A school district may expend funds received pursuant to this article for any purpose authorized by the programs listed in Section 41531, as the statutes governing those programs read on January 1, 2004, if the school district provides each teacher of kindergarten or any of grades 1 to 6, inclusive, with opportunities to participate in professional development activities in reading language arts/English language development. In providing teachers of kindergarten and any of grades 1 to 6, inclusive, with opportunities to participate in professional development activities in reading language arts/English language development, a school district shall expend at least an amount that is equal to the proportion that funding calculated pursuant to Article 3 (commencing with Section 99230) of Chapter 5 of Part 65 bears to the statewide total amount of block grant funds appropriated for purposes of this article. For purposes of this article, professional development in reading language arts/English language development shall be equivalent in rigor to the professional development provided pursuant to Article 3 (commencing with Section 99230) of Chapter 5 of Part 65, as that article read on January 1, 2004.

(c) For purposes of this article, ''school district'' includes a county office of education if county offices of education are eligible to receive funds for the programs that are listed in Section 41531. The block grant of a county office of education shall be based only on those programs for which it was eligible to receive funds in the 2003–04 fiscal year.

41531. The professional development block grant shall include funding apportioned to school districts prior to January 1, 2005, for purposes of the following programs:

(a) Staff development as set forth in Article 7.5 (commencing with Section 44579) of Chapter 3 of Part 25.

(b) Teaching as a Priority Block Grant as set forth in Chapter 3.36 (commencing with Section 44735) of Part 25.

(c) Intersegmental programs funded pursuant to Item 6110-197-0001 of Section 2.00 of the annual Budget Act.

41532. Commencing with the 2006–07 fiscal year, the amount of funding a school district receives pursuant to this article shall be adjusted for inflation by the amount calculated pursuant to Section 42238.1 and for growth as measured by the regular average daily attendance used to calculate the second principal apportionment for kindergarten and grades 1 to 12, inclusive.

Article 6. Targeted Instructional Improvement Block Grant

41540. (a) There is hereby established the targeted instructional improvement block grant. Commencing with the 2005–06 fiscal year, the Superintendent of Public Instruction shall apportion block grant funds to a school district in the same relative statewide proportion that the school district received in the 2003–04 fiscal year for the programs listed in Section 41541.

(b) If a school district is not in violation of a court order regarding desegregation, the school district may expend funds received pursuant to this article for any purpose authorized by the programs listed in Section 41541 as the statutes governing those programs read on January 1, 2004.

(c) For purposes of this article, ''school district'' includes a county office of education if county offices of education are eligible to receive funds for the programs that are listed in Section 41541. The block grant of a county office of education shall be based only on those programs for which it was eligible to receive funds in the 2003–04 fiscal year.

41541. The targeted instructional improvement block grant shall include funding apportioned to school districts prior to January 1, 2005, for purposes of the following programs:

(a) Targeted instructional improvement as set forth in Chapter 2.5 (commencing with Section 54200) of Part 29.

(b) Supplemental grants as set forth in Article 9 (commencing with Section 54760) of Chapter 9 of Part 29.

41542. Commencing with the 2006–07 fiscal year, the amount of funding a school district receives pursuant to this article shall be adjusted for inflation by the amount calculated pursuant to Section 42238.1 and for growth as measured by the regular average daily attendance used to calculate the second principal apportionment for kindergarten and grades 1 to 12, inclusive.

41543. In expending funds received pursuant to this article, a school district shall give first priority to funding the costs of a court-ordered desegregation program if the order exists and is still in force.

Article 7. School and Library Improvement Block Grant

41570. (a) There is hereby established the school and library improvement block grant. Commencing with the 2005–06 fiscal year, the Superintendent of Public Instruction shall apportion block grant funds to a school district in the same relative statewide proportion that the school district received in the 2003–04 fiscal year for the programs listed in Section 41571.

(b) (1) Except as specified in paragraph (2), a school district may expend funds received pursuant to this article for any purpose authorized by the programs listed in Section 41571, as the statutes governing those programs read on January 1, 2004.

(2) If a school district did not participate before January 1, 2004, in the school improvement program as set forth in Chapter 6 (commencing with Section 52000) of Part 28, the school district shall use grant funds received pursuant to this article for school library materials as set forth in Article 7 (commencing with Section 18180) of Chapter 2 of Part 11, as that article read on January 1, 2004.

(c) For purposes of this article, ''school district'' includes a county office of education if county offices of education are eligible to receive funds for the programs that are listed in Section 41571. The block grant of a county office of education shall be based only on those programs for which it was eligible to receive funds in the 2003–04 fiscal year.

41571. The school and library improvement block grant shall include funding previously apportioned to school districts for purposes of the following programs:

(a) School library materials as set forth in Article 7 (commencing with Section 18180) of Chapter 2 of Part 11.

(b) School improvement programs as set forth in Chapter 6 (commencing with Section 52000) of Part 28.

41572. A school district that receives funds pursuant to this section shall have a school level advisory committee as required by Chapter 6 (commencing with Section 52000) of Part 28, as it read on January 1, 2004, and shall have a single school plan that incorporates the requirements of Sections 18181, 52014, and 52015, as those sections read on January 1, 2004.

41573. Commencing with the 2006–07 fiscal year, the amount of funding a school district receives pursuant to this article shall be adjusted annually for inflation by the amount calculated pursuant to Section 42238.1 and for growth as measured by enrollment in kindergarten and grades 1 to 12, inclusive, as reported in the CBEDS report. For purposes of this subdivision, ''CBEDS report'' means the report submitted by the school district to the department for purposes of the California Basic Education Data System.

SEC. 8. Section 42239 of the Education Code is amended to read:

42239. For the 2000–01 fiscal year, and each fiscal year thereafter, the Superintendent of Public Instruction shall compute funding for supplemental instruction for each school district or charter school in the following manner:

(a) Multiply the number of pupil hours of supplemental instruction claimed pursuant to Sections 37252 and 37252.2 by the pupil hour allowance specified in subdivision (c) or by a pupil hour allowance

specified in the annual Budget Act in lieu of the amount computed in subdivision (c).

(b) Multiply the number of pupil hours of supplemental instruction claimed pursuant to Sections 37252.6, 37252.8, and 37253 by the pupil hour allowance specified in subdivision (c) or by a per-pupil hour allowance specified in the annual Budget Act in lieu of the amount computed in subdivision (c). The total number of pupil hours of supplemental instruction that may be claimed pursuant to Section 37253 may not exceed the limits on pupil hours that may be claimed as established by subdivisions (c) and (d) of Section 37253. The total number of pupil hours of supplemental instruction that may be claimed pursuant to Section 37252.6 may not exceed the limits on pupil hours that may be claimed as established in subdivision (g) of that section.

(c) Commencing with the 2000–01 fiscal year, hours of supplemental instruction shall be reimbursed at a rate of three dollars and twenty-five cents ($3.25) per pupil hour, adjusted in future years as specified in this section, provided that a different reimbursement rate may be specified for each fiscal year in the annual Budget Act that appropriates funding for that fiscal year. This amount shall be increased annually by the percentage increase pursuant to subdivision (b) of Section 42238.1 granted to school districts or charter schools for base revenue limit cost-of-living increases.

(d) (1) If appropriated funding is insufficient to pay all claims made in any fiscal year pursuant to Section 37252 or 37252.2, the superintendent shall use any available funding appropriated for the purposes of reimbursing school districts pursuant to Section 37252, 37252.2, 37252.5, or subdivision (d) of Section 37253.

(2) If appropriated funding is still insufficient to pay all claims made in any fiscal year pursuant to Section 37252, 37252.2, or 37252.5, the superintendent shall use any available funding appropriated for the purposes of reimbursing school districts for supplemental instruction in the prior fiscal year.

(3) If appropriated funding is still insufficient to pay all claims made in any fiscal year pursuant to Section 37252 or 37252.2, the superintendent shall use any available funding appropriated for the purposes of reimbursing school districts for supplemental instruction in the current fiscal year.

(4) The superintendent shall notify the Director of Finance that there is a deficiency of funding appropriated for the purposes of Sections 37252, 37252.2, and 37252.5 only after the superintendent has exhausted all available balances of appropriations made for the current or prior fiscal years for the reimbursement of school districts for supplemental instruction.

(e) Notwithstanding any other provision of law, neither the State Board of Education nor the Superintendent of Public Instruction may waive any provision of this section.

(f) 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. 9. Section 42239 is added to the Education Code, to read:

42239. (a) For the 2005–06 fiscal year, and each fiscal year thereafter, the Superintendent of Public Instruction shall compute funding for supplemental instruction for each school district or charter school by multiplying the number of pupil hours of supplemental instruction claimed pursuant to Sections 37252 and 37252.2 by the pupil hour allowance specified in subdivision (b) or by a pupil hour allowance specified in the annual Budget Act in lieu of the amount computed in subdivision (b).

(b) Commencing with the 2000–01 fiscal year, hours of supplemental instruction shall be reimbursed at a rate of three dollars and twenty-five cents ($3.25) per pupil hour, adjusted in future years as specified in this section, provided that a different reimbursement rate may be specified for each fiscal year in the annual Budget Act that appropriates funding for that fiscal year. This amount shall be increased annually by the percentage increase pursuant to subdivision (b) of Section 42238.1 granted to school districts or charter schools for base revenue limit cost-of-living increases.

(c) (1) If appropriated funding is insufficient to pay all claims made in any fiscal year pursuant to Sections 37252 and 37252.2, the superintendent shall use any available funding appropriated for the purposes of reimbursing school districts pursuant to Sections 37252 and 37252.2.

(2) If appropriated funding is still insufficient to pay all claims made in any fiscal year pursuant to Sections 37252 and 37252.2, the superintendent shall use any available funding appropriated for the purposes of reimbursing school districts for supplemental instruction in the prior fiscal year.

(3) If appropriated funding is still insufficient to pay all claims made in any fiscal year pursuant to Sections 37252 and 37252.2, the superintendent shall use any available funding appropriated for the purposes of reimbursing school districts for supplemental instruction in the current fiscal year.

(4) If appropriated funding is still insufficient to pay all claims made in any fiscal year pursuant to Sections 37252 and 37252.2, the superintendent shall certify to the Controller the amount of funds needed to fully fund claims pursuant to Sections 37252 and 37252.2. Upon

receipt of certification from the superintendent, the Controller shall transfer the amount from any funds available for that fiscal year for the Pupil Retention Block Grant program provided pursuant to Article 1 (commencing with Section 41505) of Chapter 3.2 of Part 24. If insufficient funds are available from the appropriation for the Pupil Retention Block Grant program for the fiscal year, the Controller shall transfer any remaining funds needed from any amount appropriated for the Pupil Retention Block Grant program for the following fiscal year.

(5) The superintendent shall notify the Director of Finance that there is an insufficiency of funding appropriated for the purposes of Sections 37252 and 37252.2 only after the superintendent has exhausted all available balances of appropriations made for the current or prior fiscal years for the reimbursement of school districts for supplemental instruction and shall report the amount certified to be transferred from the Pupil Retention Block Grant to eliminate that insufficiency.

(d) Notwithstanding any other provision of law, neither the State Board of Education nor the Superintendent of Public Instruction may waive any provision of this section.

(e) This section shall become operative on July 1, 2005.

SEC. 10. Section 42239.1 of the Education Code is amended to read:

42239.1. (a) For the 1999–2000 fiscal year and each fiscal year thereafter, each school district is eligible for reimbursement for hours of pupil attendance claimed for intensive reading programs offered pursuant to Article 1 (commencing with Section 53025) of Chapter 16 of Part 28 in an amount up to 10 percent of the district's total enrollment in kindergarten and grades 1 to 4, inclusive, for the prior fiscal year multiplied by 120 hours, multiplied by the hourly rate for the current fiscal year determined pursuant to subdivision (c) of Section 42239. This amount shall be provided in addition to amounts claimed pursuant to Sections 37252, 37252.2, 37252.5, 35252.6, 37252.8, and 37253.

(b) In expending funds received pursuant to this section, a school district shall give first priority for the purpose specified in paragraph (1) of subdivision (c) of Section 53027.

(c) Reimbursement pursuant to this section is contingent on an appropriation being made for that purpose in the annual Budget Act.

(d) 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. 11. Section 42239.15 of the Education Code is amended to read:

42239.15. (a) For the 2000–01 fiscal year and each fiscal year thereafter, each school district and charter school is eligible for

reimbursement for hours of pupil attendance claimed for intensive algebra instruction academies offered pursuant to Chapter 18 (commencing with Section 53091) of Part 28 in an amount up to 6 percent of the total enrollment in grades 7 and 8 of the school district or charter school for the prior fiscal year multiplied by 120 hours, multiplied by the hourly rate for the current fiscal year determined pursuant to subdivision (c) of Section 42239. This amount shall be provided in addition to the amount provided pursuant to Section 42239.

(b) In expending funds received pursuant to this section, a school district shall give first priority for the purpose specified in paragraph (1) of subdivision (d) of Section 53092.

(c) Reimbursement pursuant to this section is contingent on an appropriation being made for that purpose in the annual Budget Act.

(d) 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. 12. Section 42243.7 of the Education Code is amended to read:

42243.7. (a) For any school district that commenced operations on or after June 30, 1978, or for any school district that receives approval from the department for a new continuation education high school for the 1979–80 fiscal year, or any fiscal year thereafter, the Superintendent of Public Instruction shall compute an adjustment to the district revenue limit pursuant to this section.

(b) Determine the amount of foundation program that the district would have been entitled to pursuant to subdivision (a) of Section 41711, as that section read on July 1, 1977, if the district had operated during the 1977–78 fiscal year, utilizing the number of units of average daily attendance attending high school in the district in the fiscal year for which the revenue limit is being computed.

(c) Determine the amount of foundation program that the district would have been entitled to pursuant to paragraph (1) of subdivision (b) of Section 41711, as that section read on July 1, 1977, if the district had operated during the 1977–78 fiscal year, utilizing the same number of units of average daily attendance used in subdivision (b) of this section.

(d) Subtract the amount determined pursuant to subdivision (c) from the amount computed pursuant to subdivision (b).

(e) The amount computed pursuant to subdivision (d), if greater than zero, shall be added to the revenue limit computed pursuant to subdivision (c) of Section 42237 or pursuant to Section 42238. If the amount in subdivision (d) is less than zero there is no adjustment.

(f) The Superintendent of Public Instruction shall reduce by the amount computed pursuant to subdivision (e) the revenue limit

computed pursuant to Section 42238 of any district discontinuing the operation of a continuation education school approved pursuant to subdivision (a).

(g) (1) For the 1994–95 to 2002–03 fiscal years, inclusive, the adjustment computed pursuant to this section may not be adjusted by the deficit factor applied to the revenue limit of each school district pursuant to Section 42238.145.

(2) For the 2003–04 fiscal year and each fiscal year thereafter, the revenue limit reduction specified in Section 42238.146 may not be applied to the adjustment computed pursuant to this section.

(h) The adjustment computed pursuant to this section for a new continuation education high school may be applicable for any unified school district that was not fully operational during the first year of operation of the continuation education high school. The number of units of average daily attendance to be used in computing the adjustment shall be the number of units of average daily attendance generated by the continuation education high school in the district for the first year that the district is fully operational in all grades.

(i) In the 1998–99 fiscal year and each fiscal year thereafter, the ranges of average daily attendance resulting from the calculation set forth in this section pursuant to Section 41711, as that section read on July 1, 1977, shall be reduced by the statewide average percentage that absences excused pursuant to subdivision (b) of Section 46010, as that section read on July 1, 1996, were of total second principal apportionment regular average daily attendance for high schools in 1996–97, with the reduced ranges then rounded to the nearest integer.

(j) Commencing with the 2005–06 fiscal year and notwithstanding any provision of law, the amount of the adjustment calculated pursuant to this section shall not be added to the revenue limit of a school district, but shall be used in determining the amount of the pupil retention block grant awarded a school district pursuant to Article 1 (commencing with Section 41500) of Chapter 3.2.

SEC. 13. Section 42289.6 is added to the Education Code, to read:

42289.6. (a) It is the intent of the Legislature that the Quality Education Commission review the eligibility provisions for the establishment of necessary small schools as specified in Sections 42280, 42282, 42283, 42284, and 42285, including the following:

(1) The appropriate size for a necessary small elementary school, a necessary small middle school, and a necessary small high school.

(2) Whether mileage and other eligibility requirements are appropriate or need to be modified.

(b) It is further the intent of the Legislature that by January 1, 2006, the Quality Education Commission recommend to the Legislature

modifications regarding the size, eligibility requirements, and funding of necessary small schools.

SEC. 14. Section 44579.6 is added to the Education Code, to read:

44579.6. This article 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. 15. Section 47774 is added to the Education Code, to read:

47774. This part shall become inoperative on July 1, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute that is enacted before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 16. Section 48431.6 of the Education Code is amended to read:

48431.6. (a) The governing board of each district maintaining high schools and accepting funds made available for purposes of this section shall establish and maintain a program which ensures that each pupil, upon reaching the age of 16 years or prior to the end of grade 10, whichever occurs first, has received a systematic review of his or her academic progress and counseling regarding his or her educational options during the final two years of high school. The program shall be adopted at a public meeting of the governing board and shall include all of the following:

(1) Provision for individualized review of the pupil's academic and deportment records.

(2) Provision for a meeting with the pupil and where feasible, with the pupil's parent or guardian, to explain the pupil's record, his or her educational options, the coursework and academic progress needed for satisfactory completion of high school, and the effect of that coursework and academic progress upon the pupil's options for postsecondary education and employment. Educational options shall include regional occupational centers and programs, continuation schools, academic programs, and any other alternatives available to pupils of the district.

(3) Provision for services of teachers, counselors, and others designated by the governing board to provide the individualized review and assistance to pupils pursuant to paragraphs (1) and (2). To the maximum extent feasible, regional occupational center or program counselors shall actively participate in, and the local business community shall be involved in, career guidance activities.

(b) The program shall give first priority to identifying pupils who are not earning credits at a rate that will enable them to graduate with the rest of their class, and to providing these pupils with counseling services funded pursuant to Section 48431.7.

(c) This section shall become inoperative on July 1, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute that is enacted before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 17. Section 48431.7 of the Education Code is amended to read:

48431.7. (a) Funds appropriated for purposes of Section 48431.6 shall supplement, and shall not supplant, existing funding for counseling services. Out of funds appropriated for those purposes, the Superintendent of Public Instruction shall apportion twenty dollars ($20) per prior year's enrollment in grade 10 to each school district that has adopted a program pursuant to Section 48431.6.

(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. 18. Section 48642 is added to the Education Code, to read:

48642. This article 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. 19. Section 48644.5 of the Education Code is amended to read:

48644.5. This article 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. 20. Section 52002 is added to the Education Code, to read:

52002. This chapter 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. 21. Section 52891 is added to the Education Code, to read:

52891. This article 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. 22. Section 52904 of the Education Code is amended to read:

52904. This article 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 is repealed.

SEC. 23. Section 53032 is added to the Education Code, to read:

53032. This article 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. 24. Section 53095 is added to the Education Code, to read:

53095. This chapter 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. 25. Section 54206 is added to the Education Code, to read:

54206. This chapter 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. 26. Section 54669 is added to the Education Code, to read:

54669. This article 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. 27. Section 54686.2 of the Education Code is amended to read:

54686.2. This article shall become inoperative on July 1, 2005, and as of January 1, 2006, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 28. Section 54735 is added to the Education Code, to read:

54735. This article 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. 29. Section 54763 is added to the Education Code, to read:

54763. This article 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. 30. Section 58562 of the Education Code is amended to read:

58562. This chapter 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. 31. Section 58737 is added to the Education Code, to read:

58737. This chapter 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.

CHAPTER 872

An act to amend Section 19961 of, and to add Section 19961.1 to, the Business and Professions Code, relating to gambling.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 2004.]

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

SECTION 1. Section 19961 of the Business and Professions Code is amended to read:

19961. (a) (1) Except as provided in paragraph (2), on or after the effective date of this chapter, any amendment to any ordinance that would result in an expansion of gambling in the city, county, or city and county, shall not be valid unless the amendment is submitted for approval to the voters of the city, county, or city and county, and is approved by a majority of the electors voting thereon.

(2) Notwithstanding paragraph (1) and Section 19962, an ordinance may be amended without the approval of the electors after the effective date of this chapter to expand gambling by a change that results in an increase of less than 25 percent with respect to any of the matters set forth in paragraphs (1), (2), (3), (5), and (6) of subdivision (b). Thereafter, any additional expansion shall be approved by a majority of the electors voting thereon.

(b) For the purposes of this section, ''expansion of gambling'' means, when compared to that authorized on January 1, 1996, or under an ordinance adopted pursuant to subdivision (a) of Section 19960, whichever is the lesser number, a change that results in any of the following:

(1) An increase of 25 percent or more in the number of gambling tables in the city, county, or city and county.

(2) An increase of 25 percent or more in the number of licensed card rooms in the city, county, or city and county.

(3) An increase of 25 percent or more in the number of gambling tables that may be operated in a gambling establishment in the city, county, or city and county, or an increase of two tables, whichever is greater.

(4) The authorization of any additional form of gambling, other than card games, that may be legally played in this state, to be played at a gambling establishment in the city, county, or city and county.

(5) An increase of 25 percent or more in the hours of operation of a gambling establishment in the city, county, or city and county.

(6) An increase of 25 percent or more in the maximum amount permitted to be wagered in a game.

(c) The measure to expand gambling shall appear on the ballot in substantially the following form:

"Shall gambling be expanded in ____ beyond that operated or authorized on January 1, 1996, by ____ (describe expansion)? Yes ____ No ____."

(d) The authorization of subdivision (c) is subject to Sections 19962 and 19963 until those sections are repealed.

(e) Increasing the number of games offered in a gambling establishment does not constitute an expansion of gambling pursuant to this section.

(f) No city, county, or city and county shall amend its ordinance in a cumulative manner to increase gambling by more than 25 percent for the factors listed in subdivision (b), when compared to that authorized on January 1, 1996, without conducting an election pursuant to Section 19961.

SEC. 2. Section 19961.1 is added to the Business and Professions Code, to read:

19961.1. Any amendment to a city or county ordinance relating to gambling establishments, or the Gambling Control Act, shall be submitted to the Division of Gambling Control for review and comment, before the ordinance is adopted by the city or county.

CHAPTER 873

An act to amend Section 43701 of the Health and Safety Code, relating to air pollution, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 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) Exhaust fumes from diesel-fueled engines are known to cause cancer.

(b) A study conducted by the South Coast Air Quality Management District in 2000 entitled the ''Multiple Air Toxics Exposure Study II'' or ''MATES II'' determined that 70 percent of the cancer risk from air pollution in the South Coast Air Basin is attributable to diesel engine exhaust. The State Air Resources Board has made the same finding relative to the entire State of California.

(c) Diesel engines account for more than 70 percent of particulate matter (PM) pollution from all onroad sources in California.

(d) Diesel PM has been linked to asthma and other respiratory diseases, and premature death.

(e) Diesel exhaust is also a significant source of emissions of oxides of nitrogen (NO_x), which combine with sunlight to create ground level ozone, or smog.

(f) Exposure to smog has recently been connected with decreased lung function growth in California children.

(g) Many regions of California are not in attainment with federal ambient air quality standards for ozone and PM, including, but not limited to, those regions that include the South Coast Air Basin and San Joaquin Air Basins, which have the worst air quality in the nation. Further, many of these regions are in danger of failing to meet the federal ambient air quality standards by the dates required by the federal Clean Air Act. If these regions fail to reach attainment by the applicable deadlines, their residents will continue to be exposed to severe health risks, and the regions risk the loss of billions of dollars in federal transportation funds and other potential sanctions.

(h) Heavy-duty vehicles equipped with engines that emit greater levels of NO_x and PM than the federal emissions standards that were applicable at the time they were manufactured contribute to ozone and PM levels, and pose a threat to public health in California.

SEC. 2. Section 43701 of the Health and Safety Code is amended to read:

43701. (a) Not later than July 15, 1992, the state board, in consultation with the bureau and the review committee established pursuant to subdivision (a) of Section 44021, shall, after a public hearing, adopt regulations that require that owners or operators of heavy-duty diesel motor vehicles perform regular inspections of their vehicles for excessive emissions of smoke. The inspection procedure, the frequency of inspections, the emission standards for smoke, and the

actions the vehicle owner or operator is required to take to remedy excessive smoke emissions shall be specified by the state board. Those standards shall be developed in consultation with interested parties. The smoke standards adopted under this subdivision shall not be more stringent than those adopted under Chapter 5 (commencing with Section 44000).

(b) Not later than December 15, 1993, the state board shall, in consultation with the State Energy Resources Conservation and Development Commission, and after a public hearing, adopt regulations that require that heavy-duty diesel motor vehicles subject to subdivision (a) utilize emission control equipment and alternative fuels. The state board shall consider, but not be limited to, the use of cleaner burning diesel fuel, or other methods which will reduce gaseous and smoke emissions to the greatest extent feasible, taking into consideration the cost of compliance. The regulations shall provide that any significant modification of the engine necessary to meet these requirements shall be made during a regularly scheduled major maintenance or overhaul of the vehicle's engine. If the state board requires the use of alternative fuels, it shall do so only to the extent those fuels are available.

(c) The state board shall adopt emissions standards and procedures for the qualification of any equipment used to meet the requirements of subdivision (b), and only qualified equipment shall be used.

(d) To the extent permissible under federal law, commencing January 1, 2006, the owner or operator of any commercial motor truck, as defined in Section 410 of the Vehicle Code, with a gross vehicle weight rating (GVWR) greater than 10,000 pounds that enters the state for the purposes of operating in the state shall maintain, and provide upon demand to enforcement authorities, evidence demonstrating that its engine met the federal emission standards applicable to commercial heavy-duty engines for that engine's model-year at the time it was manufactured, pursuant to the protocol and regulations developed and implemented pursuant to subdivision (e).

(e) The state board, not later than January 1, 2006, in consultation with the California Highway Patrol, shall develop, adopt, and implement regulations establishing an inspection protocol for determining whether the engine of a truck subject to the requirements of subdivision (d) met the federal emission standard applicable to heavy-duty engines for that engine's model-year at the time it was manufactured.

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 health and safety of the residents of California from the increased emissions from heavy-duty trucks domiciled in Mexico, it is necessary that this bill take effect immediately.

CHAPTER 874

An act to amend Sections 9880.1 and 9884.9 of the Business and Professions Code, relating to automotive repair.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 2004.]

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

SECTION 1. Section 9880.1 of the Business and Professions Code is amended to read:

9880.1. The following definitions apply for the purposes of this chapter:

(a) ''Automotive repair dealer'' means a person who, for compensation, engages in the business of repairing or diagnosing malfunctions of motor vehicles.

(b) ''Chief'' means the Chief of the Bureau of Automotive Repair.

(c) ''Bureau'' means the Bureau of Automotive Repair.

(d) ''Motor vehicle'' means a passenger vehicle required to be registered with the Department of Motor Vehicles and all motorcycles whether or not required to be registered by the Department of Motor Vehicles.

(e) ''Repair of motor vehicles'' means all maintenance of and repairs to motor vehicles performed by an automotive repair dealer including automotive body repair work, but excluding those repairs made pursuant to a commercial business agreement and also excluding repairing tires, changing tires, lubricating vehicles, installing light bulbs, batteries, windshield wiper blades and other minor accessories, cleaning, adjusting, and replacing spark plugs, replacing fan belts, oil, and air filters, and other minor services, which the director, by regulation, determines are customarily performed by gasoline service stations.

No service shall be designated as minor, for purposes of this section, if the director finds that performance of the service requires mechanical expertise, has given rise to a high incidence of fraud or deceptive practices, or involves a part of the vehicle essential to its safe operation.

(f) ''Person'' includes firm, partnership, association, limited liability company, or corporation.

(g) An ''automotive technician'' is an employee of an automotive repair dealer or is that dealer, if the employer or dealer repairs motor vehicles and who for salary or wage performs maintenance, diagnostics, repair, removal, or installation of any integral component parts of an engine, driveline, chassis or body of any vehicle, but excluding repairing tires, changing tires, lubricating vehicles, installing light bulbs, batteries, windshield wiper blades, and other minor accessories; cleaning, replacing fan belts, oil and air filters; and other minor services which the director, by regulation, determines are customarily performed by a gasoline service station.

(h) ''Director'' means the Director of Consumer Affairs.

(i) ''Commercial business agreement'' means an agreement, whether in writing or oral, entered into between a business or commercial enterprise and an automobile repair dealer, prior to the repair which is requested being made, which agreement contemplates a continuing business arrangement under which the automobile repair dealer is to repair any vehicle covered by the agreement, but does not mean any warranty or extended service agreement normally given by an automobile repair facility to its customers.

(j) ''Customer'' means the person presenting a motor vehicle for repair and authorizing the repairs to that motor vehicle. ''Customer'' shall not mean the automotive repair dealer providing the repair services or an insurer involved in a claim that includes the motor vehicle being repaired or an employee or agent or a person acting on behalf of the dealer or insurer.

SEC. 2. Section 9884.9 of the Business and Professions Code is amended to read:

9884.9. (a) The automotive repair dealer shall give to the customer a written estimated price for labor and parts necessary for a specific job. No work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer. No charge shall be made for work done or parts supplied in excess of the estimated price without the oral or written consent of the customer that shall be obtained at some time after it is determined that the estimated price is insufficient and before the work not estimated is done or the parts not estimated are supplied. Written consent or authorization for an increase in the original estimated price may be provided by electronic mail or facsimile transmission from the customer. The bureau may specify in regulation the procedures to be followed by an automotive repair dealer if an authorization or consent for an increase in the original estimated price is provided by electronic mail or facsimile transmission. If that consent is oral, the dealer shall make a notation on the work order of the date, time, name of person authorizing the additional repairs, and telephone number called, if any, together with a specification of the additional parts

and labor and the total additional cost, and shall do either of the following:

(1) Make a notation on the invoice of the same facts set forth in the notation on the work order.

(2) Upon completion of the repairs, obtain the customer's signature or initials to an acknowledgment of notice and consent, if there is an oral consent of the customer to additional repairs, in the following language:

"I acknowledge notice and oral approval of an increase in the original estimated price.

_____

(signature or initials)"

Nothing in this section shall be construed as requiring an automotive repair dealer to give a written estimated price if the dealer does not agree to perform the requested repair.

(b) The automotive repair dealer shall include with the written estimated price a statement of any automotive repair service that, if required to be done, will be done by someone other than the dealer or his or her employees. No service shall be done by other than the dealer or his or her employees without the consent of the customer, unless the customer cannot reasonably be notified. The dealer shall be responsible, in any case, for any service in the same manner as if the dealer or his or her employees had done the service.

(c) In addition to subdivisions (a) and (b), an automotive repair dealer, when doing auto body or collision repairs, shall provide an itemized written estimate for all parts and labor to the customer. The estimate shall describe labor and parts separately and shall identify each part, indicating whether the replacement part is new, used, rebuilt, or reconditioned. Each crash part shall be identified on the written estimate and the written estimate shall indicate whether the crash part is an original equipment manufacturer crash part or a nonoriginal equipment manufacturer aftermarket crash part.

(d) A customer may designate another person to authorize work or parts supplied in excess of the estimated price, if the designation is made in writing at the time that the initial authorization to proceed is signed by the customer. The bureau may specify in regulation the form and content of a designation and the procedures to be followed by the automotive repair dealer in recording the designation. For the purposes of this section, a designee shall not be the automotive repair dealer providing repair services or an insurer involved in a claim that includes the motor vehicle being repaired, or an employee or agent or a person acting on behalf of the dealer or insurer.

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 875

An act to add Section 1418.81 to, and to add and repeal Article 7.6 (commencing with Section 1324.20) of Chapter 2 of Division 2 of, the Health and Safety Code, and to amend Section 14105.06 of, to add and repeal Section 14126.033 of, and to repeal and add Article 3.8 (commencing with Section 14126) of Chapter 7 of Part 3 of Division 9 of, the Welfare and Institutions Code, relating to health and dependent care, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 2004.]

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

SECTION 1. Article 7.6 (commencing with Section 1324.20) is added to Chapter 2 of Division 2 of the Health and Safety Code, to read:

Article 7.6. Skilled Nursing Facility Quality Assurance Fee

1324.20. For purposes of this article, the following definitions shall apply:

(a) ''Continuing care retirement community'' means a provider of a continuum of services, including independent living services, assisted living services as defined in paragraph (5) of subdivision (a) of Section 1771, and skilled nursing care, on a single campus, that is subject to Section 1791, or a provider of such a continuum of services on a single campus that has not received a Letter of Exemption pursuant to subdivision (b) of Section 1771.3.

(b) ''Exempt facility'' means a skilled nursing facility that is part of a continuing care retirement community, a skilled nursing facility operated by the state or another public entity, or a skilled nursing facility

that is a distinct part of a facility that is licensed as a general acute care hospital.

(c) (1) ''Net revenue'' means gross resident revenue for routine nursing services and ancillary services provided to all residents by a skilled nursing facility, less Medicare revenue for routine and ancillary services including Medicare revenue for services provided to residents covered under a Medicare managed care plan, less payer discounts and applicable contractual allowances as permitted under federal law and regulation.

(2) ''Net revenue'' does not mean charitable contributions and bad debt.

(d) ''Payer discounts and contractual allowances'' means the difference between the facility's resident charges for routine or ancillary services and the actual amount paid.

(e) ''Skilled nursing facility'' means a licensed facility as defined in subdivision (c) of Section 1250.

1324.21. (a) For facilities licensed under subdivision (c) of Section 1250, there shall be imposed each state fiscal year a uniform quality assurance fee per resident day. The uniform quality assurance fee shall be based upon the entire net revenue of all skilled nursing facilities subject to the fee, except an exempt facility, as defined in Section 1324.20, calculated in accordance with subdivision (b).

(b) The amount of the uniform quality assurance fee to be assessed per resident day shall be determined based on the aggregate net revenue of skilled nursing facilities subject to the fee, in accordance with the methodology outlined in the request for federal approval required by Section 1324.27 and in regulations, provider bulletins, or other similar instructions. The uniform quality assurance fee shall be calculated as follows:

(1) (A) For the rate year 2004–05, the net revenue shall be projected for all skilled nursing facilities subject to the fee. The projection of net revenue shall be based on prior rate year data. Once determined, the aggregate projected net revenue for all facilities shall be multiplied by 2.7 percent, as determined under the approved methodology, and then divided by the projected total resident days of all providers subject to the fee.

(B) Notwithstanding subparagraph (A), the Director of Health Services may increase the amount of the fee up to 3 percent of the aggregate projected net revenue if necessary for the implementation of Article 3.8 (commencing with Section 14126) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code.

(2) For the rate year 2005–06 and subsequent rate years through and including the 2007–08 rate year, the net revenue shall be projected for all skilled nursing facilities subject to the uniform quality assurance fee.

The projection of net revenue shall be based on the prior rate year's data. Once determined, the aggregate projected net revenue for all facilities shall be multiplied by 6 percent, as determined under the approved methodology, and then divided by the projected total resident days of all providers subject to the fee.

(c) The director may assess and collect a nonuniform fee consistent with the methodology approved pursuant to Section 1324.27.

(d) In no case shall the aggregate fees collected annually pursuant to this article exceed 6 percent of the annual aggregate net revenue for licensed skilled nursing facilities subject to the fee.

(e) If there is a delay in the implementation of this article for any reason, including a delay in the approval of the quality assurance fee and methodology by the federal Centers for Medicare and Medicaid Services, in the 2004–05 rate year or in any other rate year, all of the following shall apply:

(1) Any facility subject to the fee may be assessed the amount the facility will be required to pay to the department, but shall not be required to pay the fee until the methodology is approved and Medi-Cal rates are increased in accordance with paragraph (2) of subdivision (a) of Section 1324.28 and the increased rates are paid to facilities.

(2) The department may retroactively increase and make payment of rates to facilities.

(3) Facilities that have been assessed a fee by the department shall pay the fee assessed within 60 days of the date rates are increased in accordance with paragraph (2) of subdivision (a) of Section 1324.28 and paid to facilities.

(4) The department shall accept a facility's payment notwithstanding that the payment is submitted in a subsequent fiscal year than the fiscal year in which the fee is assessed.

1324.22. (a) The quality assurance fee, as calculated pursuant to Section 1324.21, shall be paid by the provider to the department for deposit in the State Treasury on a monthly basis on or before the last day of the month following the month for which the fee is imposed, except as provided in subdivision (d) of Section 1324.21.

(b) On or before the last day of each calendar quarter, each skilled nursing facility shall file a report with the department, in a prescribed form, showing the facility's total resident days for the preceding quarter and payments made. If it is determined that a lesser amount was paid to the department, the facility shall pay the amount owed in the preceding quarter to the department with the report. Any amount determined to have been paid in excess to the department during the previous quarter shall be credited to the amount owed in the following quarter.

(c) On or before August 31 of each year, each skilled nursing facility subject to an assessment pursuant to Section 1324.21 shall report to the

department, in a prescribed form, the facility's total resident days and total payments made for the preceding state fiscal year. If it is determined that a lesser amount was paid to the department during the previous year, the facility shall pay the amount owed to the department with the report.

(d) A newly licensed skilled nursing facility, as defined by the department, shall complete all requirements of subdivision (a) for any portion of the year in which it commences operations and of subdivision (b) for any portion of the quarter in which it commences operations.

(e) When a skilled nursing facility fails to pay all or part of the quality assurance fee within 60 days of the date that payment is due, the department may deduct the unpaid assessment and interest owed from any Medi-Cal reimbursement payments to the facility until the full amount is recovered. Any deduction shall be made only after written notice to the facility and may be taken over a period of time taking into account the financial condition of the facility.

(f) Should all or any part of the quality assurance fee remain unpaid, the department may take either or both of the following actions:

(1) Assess a penalty equal to 50 percent of the unpaid fee amount.

(2) Delay license renewal.

(g) In accordance with the provisions of the Medicaid state plan, the payment of the quality assurance fee shall be considered as an allowable cost for Medi-Cal reimbursement purposes.

(h) The assessment process pursuant to this section shall become operative not later than 60 days from receipt of federal approval of the quality assurance fee, unless extended by the department. The department may assess fees and collect payment in accordance with subdivision (d) of Section 1324.21 in order to provide retroactive payments for any rate increase authorized under this article.

1324.23. (a) The Director of Health Services, or his or her designee, shall administer this article.

(b) The director may adopt regulations as are necessary to implement this article. These regulations may be adopted as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). For purposes of this article, the adoption of regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. The regulations shall include, but need not be limited to, any regulations necessary for any of the following purposes:

(1) The administration of this article, including the proper imposition and collection of the quality assurance fee not to exceed amounts reasonably necessary for purposes of this article.

(2) The development of any forms necessary to obtain required information from facilities subject to the quality assurance fee.

(3) To provide details, definitions, formulas, and other requirements.

(c) As an alternative to subdivision (b), and 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 may implement this article, in whole or in part, by means of a provider bulletin, or other similar instructions, without taking regulatory action, provided that no such bulletin or other similar instructions shall remain in effect after July 31, 2007. It is the intent of the Legislature that the regulations adopted pursuant to subdivision (b) shall be adopted on or before July 31, 2007.

1324.24. The quality assurance fee assessed and collected pursuant to this article shall be deposited in the State Treasury.

1324.25. The funds assessed pursuant to this article shall be available to enhance federal financial participation in the Medi-Cal program or to provide additional reimbursement to, and to support facility quality improvement efforts in, licensed skilled nursing facilities.

1324.26. In implementing this article, the department may utilize the services of the Medi-Cal fiscal intermediary through a change order to the fiscal intermediary contract to administer this program, consistent with the requirements of Sections 14104.6, 14104.7, 14104.8, and 14104.9 of the Welfare and Institutions Code.

1324.27. (a) (1) The department shall request approval from the federal Centers for Medicare and Medicaid Services for the implementation of this article. In making this request, the department shall seek specific approval from the federal Centers for Medicare and Medicaid Services to exempt facilities identified in subdivision (b) of Section 1324.20, including the submission of a request for waiver of broad based requirement, waiver of uniform fee requirement, or both, pursuant to paragraphs (1) and (2) of subdivision (e) of Section 433.68 of Title 42 of the Code of Federal Regulations.

(2) The director may alter the methodology specified in this article, to the extent necessary to meet the requirements of federal law or regulations or to obtain federal approval. The Director of Health Services may also add new categories of exempt facilities, such as facilities designated as institutions for mental diseases or special treatment programs, or apply a nonuniform fee to the skilled nursing facilities subject to the fee in order to meet requirements of federal law or regulations. The Director of Health Services may apply a zero fee to one or more exempt categories of facilities, if necessary to obtain federal approval.

(3) If after seeking federal approval, federal approval is not obtained, this article shall not be implemented.

(b) The department shall make retrospective adjustments, as necessary, to the amounts calculated pursuant to Section 1324.21 in order to assure that the aggregate quality assurance fee for any particular state fiscal year does not exceed 6 percent of the aggregate annual net revenue of facilities subject to the fee.

1324.28. (a) This article shall be implemented as long as both of the following conditions are met:

(1) The state receives federal approval of the quality assurance fee from the federal Centers for Medicare and Medicaid Services.

(2) Legislation is enacted in the 2004 legislative session making an appropriation from the General Fund and from the Federal Trust Fund to fund a rate increase for skilled nursing facilities, as defined under subdivision (c) of Section 1250, for the 2004–05 rate year in an amount consistent with the Medi-Cal rates that specific facilities would have received under the rate methodology in effect as of July 31, 2004, plus the proportional costs as projected by Medi-Cal for new state or federal mandates.

(b) This article shall remain operative only as long as all of the following conditions are met:

(1) The federal Centers for Medicare and Medicaid Services continues to allow the use of the provider assessment provided in this article.

(2) The Medi-Cal Long Term Care Reimbursement Act, Article 3.8 (commencing with Section 14126) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code, as added during the 2003–04 Regular Session by the act adding this section, is enacted and implemented on or before July 31, 2005, or as extended as provided in that article, and remains in effect thereafter.

(3) The state has continued its maintenance of effort for the level of state funding of nursing facility reimbursement for rate year 2005-06, and for every subsequent rate year continuing through the 2007–08 rate year, in an amount not less than the amount that specific facilities would have received under the rate methodology in effect on July 31, 2004, plus Medi-Cal's projected proportional costs for new state or federal mandates, not including the quality assurance fee.

(4) The full amount of the quality assurance fee assessed and collected pursuant to this article remains available for the purposes specified in Section 1324.25 and for related purposes.

(c) If all of the conditions in subdivision (a) are met, this article is implemented, and subsequently, any one of the conditions in subdivision (b) is not met, on and after the date that the department makes that determination, this article shall not be implemented, notwithstanding that the condition or conditions subsequently may be met.

(d) Notwithstanding subdivisions (a), (b), and (c), in the event of a final judicial determination made by any state or federal court that is not appealed, or by a court of appellate jurisdiction that is not further appealed, in any action by any party, or a final determination by the administrator of the federal Centers for Medicare and Medicaid Services, that federal financial participation is not available with respect to any payment made under the methodology implemented pursuant to this article because the methodology is invalid, unlawful, or contrary to any provision of federal law or regulations, or of state law, this section shall become inoperative.

1324.29. The quality assurance fee shall cease to be assessed and collected on or after July 31, 2008.

1324.30. This article 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. Section 1418.81 is added to the Health and Safety Code, to read:

1418.81. (a) In order to assure the provision of quality patient care and as part of the planning for that quality patient care, commencing at the time of admission, a skilled nursing facility, as defined in subdivision (c) of Section 1250, shall include in a resident's care assessment the resident's projected length of stay and the resident's discharge potential. The assessment shall include whether the resident has expressed or indicated a preference to return to the community and whether the resident has social support, such as family, that may help to facilitate and sustain return to the community. The assessment shall be recorded with the relevant portions of the minimum data set, as described in Section 14110.15 of the Welfare and Institutions Code. The plan of care shall reflect, if applicable, the care ordered by the attending physician needed to assist the resident in achieving the resident's preference of return to the community.

(b) The skilled nursing facility shall evaluate the resident's discharge potential at least quarterly or upon a significant change in the resident's medical condition.

(c) The interdisciplinary team shall oversee the care of the resident utilizing a team approach to assessment and care planning and shall include the resident's attending physician, a registered professional nurse with responsibility for the resident, other appropriate staff in disciplines as determined by the resident's needs, and, where practicable, a resident's representative, in accordance with applicable federal and state requirements.

(d) If return to the community is part of the care plan, the facility shall provide to the resident or responsible party and document in the care plan

the information concerning services and resources in the community. That information may include information concerning:

(1) In-home supportive services provided by a public authority or other legally recognized entity, if any.

(2) Services provided by the Area Agency on Aging, if any.

(3) Resources available through an independent living center.

(4) Other resources or services in the community available to support return to the community.

(e) If the resident is otherwise eligible, a skilled nursing facility shall make, to the extent services are available in the community, a reasonable attempt to assist a resident who has a preference for return to the community and who has been determined to be able to do so by the attending physician, to obtain assistance within existing programs, including appropriate case management services, in order to facilitate return to the community. The targeted case management services provided by entities other than the skilled nursing facility shall be intended to facilitate and sustain return to the community.

(f) Costs to skilled nursing facilities to comply with this section shall be allowable for Medi-Cal reimbursement purposes pursuant to Section 1324.25, but shall not be considered a new state mandate under Section 14126.023 of the Welfare and Institutions Code.

SEC. 3. Section 14105.06 of the Welfare and Institutions Code is amended to read:

14105.06. (a) Notwithstanding Section 14105 and any other provision of law, the Medi-Cal reimbursement rates in effect on August 1, 2003, shall remain in effect through July 31, 2005, for the following providers:

(1) Freestanding nursing facilities licensed as either of the following:

(A) An intermediate care facility pursuant to subdivision (d) of Section 1250 of the Health and Safety Code.

(B) An intermediate care facility for the developmentally disabled pursuant to subdivision (e), (g), or (h) of Section 1250 of the Health and Safety Code.

(2) A skilled nursing facility that is a distinct part of a general acute care hospital. For purposes of this paragraph, ''distinct part'' shall have the same meaning as defined in Section 72041 of Title 22 of the California Code of Regulations.

(3) A subacute care program, as described in Section 14132.25 or subacute care unit, as described in Sections 51215.5 and 51215.8 of Title 22 of the California Code of Regulations.

(4) An adult day health care center.

(b) (1) The director may adopt regulations as are necessary to implement subdivision (a). These regulations shall be adopted as emergency regulations in accordance with the rulemaking provisions of

the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For purposes of this section, the adoption of regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, and safety or general welfare.

(2) As an alternative to paragraph (1), and Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the director may implement this article by means of a provider bulletin, or similar instructions, without taking regulatory action.

(c) The director shall implement subdivision (a) in a manner that is consistent with federal medicaid law and regulations. The director shall seek any necessary federal approvals for the implementation of this section. This section shall be implemented only to the extent that federal approval is obtained.

(d) The provisions of subdivision (a) shall apply to a skilled nursing facility, as defined in subdivision (c) of Section 1250 of the Health and Safety Code, only until the first day of the month following federal approval to implement both the skilled nursing quality assurance fee imposed by Article 7.6 (commencing with Section 1324.20) of Chapter 2 of Division 2 of the Health and Safety Code and the rate methodology developed pursuant to Article 3.8 (commencing with Section 14126) of Chapter 3 of Part 3 of Division 9.

SEC. 4. Article 3.8 (commencing with Section 14126) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code is repealed.

SEC. 5. Article 3.8 (commencing with Section 14126) is added to Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 3.8. Medi-Cal Long-Term Care Reimbursement Act

14126. This article shall be known as the Medi-Cal Long-Term Care Reimbursement Act.

14126.02. (a) It is the intent of the Legislature to devise a Medi-Cal long-term care reimbursement methodology that more effectively ensures individual access to appropriate long-term care services, promotes quality resident care, advances decent wages and benefits for nursing home workers, supports provider compliance with all applicable state and federal requirements, and encourages administrative efficiency.

(b) The department shall implement a facility-specific ratesetting system, subject to federal approval and the availability of federal funds, that reflects the costs and staffing levels associated with quality of care for residents in nursing facilities, as defined in subdivision (c) of Section 1250 of the Health and Safety Code. The facility-specific ratesetting

system shall be effective commencing on August 1, 2005, and shall be implemented commencing on the first day of the month following federal approval. The department may retroactively increase and make payment of rates to facilities.

(c) In implementing this section, the department may contract as necessary, on a bid or nonbid basis, for professional consulting services from nationally recognized higher education and research institutions, or other qualified individuals and entities not associated with a skilled nursing facility, with demonstrated expertise in long-term care reimbursement systems. The ratesetting system specified in subdivision (b) shall be developed with all possible expedience. This subdivision establishes an accelerated process for issuing contracts pursuant to this section and contracts entered into pursuant to this subdivision shall be exempt from the requirements of Chapter 1 (commencing with Section 10100) and Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

(d) The department shall implement a facility-specific ratesetting system by August 1, 2004, subject to federal approval and availability of federal or other funds, that reflects the costs and staffing levels associated with quality of care for residents in hospital-based nursing facilities.

14126.021. The department shall develop and implement a cost-based reimbursement rate methodology using the cost categories as described in Section 14126.023, for freestanding nursing facilities pursuant to this article, excluding nursing facilities that are a distinct part of a facility that is licensed as a general acute care hospital as identified pursuant to subdivision (d) of Section 14126.02. The cost-based reimbursement rate methodology shall be effective on August 1, 2005, and shall be implemented on the first day of the month following federal approval.

14126.023. (a) The methodology developed pursuant to this article shall be facility specific and reflect the sum of the projected cost of each cost category and passthrough costs, as follows:

(1) Labor costs limited as specified in subdivision (c).

(2) Indirect care nonlabor costs limited to the 75th percentile.

(3) Administrative costs limited to the 50th percentile.

(4) Capital costs based on a fair rental value system (FRVS) limited as specified in subdivision (d).

(5) Direct passthrough of proportional Medi-Cal costs for property taxes, facility license fees, new state and federal mandates, caregiver training costs, and liability insurance projected on the prior year's costs.

(b) The percentiles in paragraphs (1) through (3) of subdivision (a) shall be based on annualized costs divided by total resident days and

computed on a specific geographic peer group basis. Costs within a specific cost category shall not be shifted to any other cost category.

(c) The labor costs category shall be comprised of a direct resident care labor cost category, an indirect care labor cost category, and a labor-driven operating allocation cost category, as follows:

(1) Direct resident care labor cost category which shall include all labor costs related to routine nursing services including all nursing, social services, activities, and other direct care personnel. These costs shall be limited to the 90th percentile.

(2) Indirect care labor cost category which shall include all labor costs related to staff supporting the delivery of patient care including, but not limited to, housekeeping, laundry and linen, dietary, medical records, inservice education, and plant operations and maintenance. These costs shall be limited to the 90th percentile.

(3) Labor-driven operating allocation shall include an amount equal to 8 percent of labor costs, minus expenditures for temporary staffing, which may be used to cover allowable Medi-Cal expenditures. In no instance shall the operating allocation exceed 5 percent of the facility's total Medi-Cal reimbursement rate.

(d) The capital cost category shall be based on a FRVS that recognizes the value of the capital related assets necessary to care for Medi-Cal residents. The capital cost category includes mortgage principal and interest, leases, leasehold improvements, depreciation of real property, equipment, and other capital related expenses. The FRVS methodology shall be based on the formula developed by the department that assesses facility value based on age and condition and uses a recognized market interest factor. Capital investment and improvement expenditures included in the FRVS formula shall be documented in cost reports or supplemental reports required by the department. The capital costs based on FRVS shall be limited as follows:

(1) For the 2005–06 rate year, the capital cost category for all facilities in the aggregate shall not exceed the department's estimated value for this cost category for the 2004–05 rate year.

(2) For the 2006–07 rate year and subsequent rate years, the maximum annual increase for the capital cost category for all facilities in the aggregate shall not exceed 8 percent of the prior rate year's FRVS cost component.

(3) If the total capital costs for all facilities in the aggregate for the 2005–06 rate year exceeds the value of the capital costs for all facilities in the aggregate for the 2004–05 rate year, or if that capital cost category for all facilities in the aggregate for the 2006–07 rate year or any rate year thereafter exceeds 8 percent of the prior rate year's value, the department shall reduce the capital cost category for all facilities in equal proportion in order to comply with paragraphs (1) and (2).

(e) For the 2005–06 and 2006–07 rate years, the facility specific Medi-Cal reimbursement rate calculated under this article shall not be less than the Medi-Cal rate that the specific facility would have received under the rate methodology in effect as of July 31, 2005, plus Medi-Cal's projected proportional costs for new state or federal mandates for rate years 2005–06 and 2006–07, respectively.

(f) The department shall update each facility specific rate calculated under this methodology annually. The update process shall be prescribed in the Medicaid state plan, regulations, and the provider bulletins or similar instructions described in Section 14126.027, and shall be adjusted in accordance with the results of facility specific audit and review findings in accordance with subdivisions (h) and (i).

(g) The department shall establish rates pursuant to this article on the basis of facility cost data reported in the integrated long-term care disclosure and Medi-Cal cost report required by Section 128730 of the Health and Safety Code for the most recent reporting period available, and cost data reported in other facility financial disclosure reports or supplemental information required by the department in order to implement this article.

(h) The department shall conduct financial audits of facility and home office cost data as follows:

(1) The department shall audit facilities a minimum of once every three years to ensure accuracy of reported costs.

(2) It is the intent of the Legislature that the department develop and implement limited scope audits of key cost centers or categories to assure that the rate paid in the years between each full scope audit required in paragraph (1) accurately reflects actual costs.

(3) For purposes of updating facility specific rates, the department shall adjust or reclassify costs reported consistent with applicable requirements of the Medicaid state plan as required by Part 413 (commencing with Section 413.1) of Title 42 of the Code of Federal Regulations.

(4) Overpayments to any facility shall be recovered in a manner consistent with applicable recovery procedures and requirements of state and federal laws and regulations.

(i) (1) On an annual basis, the department shall use the results of audits performed pursuant to subdivision (h), the results of any federal audits, and facility cost reports, including supplemental reports of actual costs incurred in specific cost centers or categories as required by the department, to determine any difference between reported costs used to calculate a facility's rate and audited facility expenditures in the rate year.

(2) If the department determines that there is a difference between reported costs and audited facility expenditures pursuant to paragraph

(1), the department shall adjust a facility's reimbursement prospectively over the intervening years between audits by an amount that reflects the difference, consistent with the methodology specified in this article.

(j) For nursing facilities that obtain an audit appeal decision that results in revision of the facility's allowable costs, the facility shall be entitled to seek a retroactive adjustment in its facility specific reimbursement rate.

(k) Compliance by each facility with state laws and regulations regarding staffing levels shall be documented annually either through facility cost reports, including supplemental reports, or through the annual licensing inspection process specified in Section 1422 of the Health and Safety Code.

14126.025. (a) The department shall seek approval of an amendment to the Medicaid state plan specifically outlining the reimbursement methodology developed pursuant to this article not later than February 1, 2005.

(b) The amendment to the Medicaid state plan pursuant to subdivision (a), and any regulations, provider bulletins, or other similar instructions, shall be prepared in consultation with representatives of the long-term care industry, organized labor, seniors, and consumers.

14126.027. (a) (1) The Director of Health Services, or his or her designee, shall administer this article.

(2) The regulations and other similar instructions adopted pursuant to this article shall be developed in consultation with representatives of the long-term care industry, organized labor, seniors, and consumers.

(b) (1) The director may adopt regulations as are necessary to implement this article. 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.

(2) The regulations adopted pursuant to this section may include, but need not be limited to, any regulations necessary for any of the following purposes:

(A) The administration of this article, including the specific analytical process for the proper determination of long-term care rates.

(B) The development of any forms necessary to obtain required cost data and other information from facilities subject to the ratesetting methodology.

(C) To provide details, definitions, formulas, and other requirements.

(c) As an alternative to the adoption of regulations pursuant to subdivision (b), and notwithstanding Chapter 3.5 (commencing with

Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the director may implement this article, in whole or in part, by means of a provider bulletin or other similar instructions, without taking regulatory action, provided that no such bulletin or other similar instructions shall remain in effect after July 31, 2007. It is the intent that regulations adopted pursuant to subdivision (b) shall be in place on or before July 31, 2007.

14126.031. (a) In implementing this article, the department may use the process outlined in subdivision (c) of Section 14126.02 to obtain professional consulting services for the purpose of finalizing design of the system, procurement of required technical hardware and software, establishing operational parameters, implementation, and transitional management pending assumption of operational management by state staff.

(b) The ratesetting system described in subdivision (b) of Section 14126.02 shall be developed expeditiously in order to meet the implementation date required under Section 14126.02.

(c) To ensure compliance with the timeframes set forth in this article, it is the intent of the Legislature that the department be authorized to hire up to three full-time equivalents to support implementation and continuous operation of the system.

14126.033. (a) This article, including Section 14126.031, shall be funded as follows:

(1) General Fund moneys appropriated for purposes of this article pursuant to Section 6 of the act adding this section shall be used for increasing rates, except as provided in Section 14126.031, for freestanding skilled nursing facilities, and shall be consistent with the approved methodology required to be submitted to the Centers for Medicare and Medicaid Services pursuant to Article 7.6 (commencing with Section 1324.20) of Chapter 2 of Division 2 of the Health and Safety Code.

(2) (A) Notwithstanding Section 14126.023, for the 2005–06 rate year, the maximum annual increase in the weighted average Medi-Cal rate required for purposes of this article shall not exceed 8 percent of the weighted average Medi-Cal reimbursement rate for the 2004–05 rate year as adjusted for the change in the cost to the facility to comply with the nursing facility quality assurance fee for the 2005–06 rate year, as required under subdivision (b) of Section 1324.21 of the Health and Safety Code, plus the total projected Medi-Cal cost to the facility of complying with new state or federal mandates.

(B) Beginning with the 2006–07 rate year, the maximum annual increase in the weighted average Medi-Cal reimbursement rate required for purposes of this article shall not exceed 5 percent of the weighted average Medi-Cal reimbursement rate for the prior fiscal year, as

adjusted for the projected cost of complying with new state or federal mandates.

(C) Beginning with the 2007–08 rate year, the maximum annual increase in the weighted average Medi-Cal reimbursement rate required for purposes of this article shall not exceed 5.5 percent of the weighted average Medi-Cal reimbursement rate for the prior fiscal year, as adjusted for the projected cost of complying with new state or federal mandates.

(D) To the extent that new rates are projected to exceed the adjusted limits calculated pursuant to subparagraph (A) or (B), the department shall adjust the increase to each skilled nursing facility's projected rate for the applicable rate year by an equal percentage.

(b) The rate methodology shall cease to be implemented on and after July 31, 2008.

(c) (1) It is the intent of the Legislature that the implementation of this article result in individual access to appropriate long-term care services, quality resident care, decent wages and benefits for nursing home workers, a stable workforce, provider compliance with all applicable state and federal requirements, and administrative efficiency.

(2) Not later than December 1, 2006, the Bureau of State Audits shall conduct an accountability evaluation of the department's progress toward implementing a facility-specific reimbursement system, including a review of data to ensure that the new system is appropriately reimbursing facilities within specified cost categories and a review of the fiscal impact of the new system on the General Fund.

(3) Not later than January 1, 2007, to the extent information is available for the three years immediately preceding the implementation of this article, the department shall provide baseline information in a report to the Legislature on all of the following:

(A) The number and percent of freestanding skilled nursing facilities that complied with minimum staffing requirements.

(B) The staffing levels prior to the implementation of this article.

(C) The staffing retention rates prior to the implementation of this article.

(D) The numbers and percentage of freestanding skilled nursing facilities with findings of immediate jeopardy, substandard quality of care, or actual harm, as determined by the certification survey of each freestanding skilled nursing facility conducted prior to the implementation of this article.

(E) The number of freestanding skilled nursing facilities that received state citations and the number and class of citations issued during calendar year 2004.

(F) The average wage and benefits for employees prior to the implementation of this article.

(4) Not later than January 1, 2008, the department shall provide a report to the Legislature that does both of the following:

(A) Compares the information required in paragraph (2) to that same information two years after the implementation of this article.

(B) Reports on the extent to which residents who had expressed a preference to return to the community, as provided in Section 1418.81, were able to return to the community.

(5) The department may contract for the reports required under this subdivision.

(d) This section shall become inoperative on July 31, 2008, and as of January 1, 2009, is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

14126.035. (a) This article shall remain operative only as long as Article 7.6 (commencing with Section 1324.20) of Chapter 2 of Division 2 of the Health and Safety Code, which imposes a skilled nursing facility quality assurance fee continues as approved by the federal Centers for Medicare and Medicaid Services pursuant to Section 1324.27 of the Health and Safety Code.

(b) In the event of a final judicial determination made by any state or federal court that is not appealed, or by a court of appellate jurisdiction that is not further appealed, in any action by any party or a final determination by the administrator of the Centers for Medicare and Medicaid Services, that federal financial participation is not available with respect to any payment made under the methodology implemented pursuant to this article because the methodology is invalid, unlawful, or is contrary to any provision of federal law or regulations, or of state law, this section shall become inoperative.

SEC. 6. (a) The following amounts are hereby appropriated to the State Department of Health Services for expenditure to fund an increase to the 2004–05 skilled nursing facility Medi-Cal reimbursement rate consistent with the existing rate methodology in the Medicaid state plan:

(1) The sum of one hundred six million seven hundred eighty-one thousand dollars ($106,781,000) from the State Treasury.

(2) The sum of one hundred six million seven hundred eighty-one thousand dollars ($106,781,000) from the Federal Trust Fund.

(b) The sum of two million dollars ($2,000,000) for the 2004–05 fiscal year and one million dollars ($1,000,000) for the 2005–06 fiscal year is hereby appropriated to the State Department of Health Services from the General Fund for expenditure for purposes of implementing Section 14126.031 of the Welfare and Institutions Code.

(c) The sum of three hundred fifty thousand dollars ($350,000) for both the 2004–05 fiscal year and the 2005–06 fiscal year is hereby appropriated to the State Department of Health Services from the

General Fund for expenditure for purposes of implementing Section 14126.033 of the Welfare and Institutions Code.

(d) The sum of two hundred thousand dollars ($200,000) for the 2005–06 fiscal year is hereby appropriated to the Bureau of State Audits from the General Fund for expenditure for purposes of implementing Section 14126.033 of the Welfare and Institutions 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 to make the necessary statutory changes to implement a comprehensive program to improve the quality of care provided in health facilities at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 876

An act to add Section 597.6 to the Penal Code, relating to animals.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 2004.]

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

SECTION 1. Section 597.6 is added to the Penal Code, to read:

597.6. (a) (1) No person may perform, or otherwise procure or arrange for the performance of, surgical claw removal, declawing, onychectomy, or tendonectomy on any cat that is a member of an exotic or native wild cat species, and shall not otherwise alter such a cat's toes, claws, or paws to prevent the normal function of the cat's toes, claws, or paws.

(2) This subdivision does not apply to a procedure performed solely for a therapeutic purpose.

(b) Any person who violates this section is guilty of a misdemeanor punishable by imprisonment in a county jail for a period not to exceed one year, by a fine of ten thousand dollars ($10,000), or by both that imprisonment and fine.

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

(1) ''Declawing'' and ''onychectomy'' mean any surgical procedure in which a portion of the animal's paw is amputated in order to remove the animal's claws.

(2) ''Tendonectomy'' means a procedure in which the tendons to an animal's limbs, paws, or toes are cut or modified so that the claws cannot be extended.

(3) ''Exotic or native wild cat species'' include all members of the taxonomic family Felidae, except domestic cats (Felis catus or Felis domesticus) or hybrids of wild and domestic cats that are greater than three generations removed from an exotic or native cat. ''Exotic or native wild cat species'' include, but are not limited to, lions, tigers, cougars, leopards, lynxes, bobcats, caracals, ocelots, margays, servals, cheetahs, snow leopards, clouded leopards, jungle cats, leopard cats, and jaguars, or any hybrid thereof.

(4) ''Therapeutic purpose'' means for the purpose of addressing an existing or recurring infection, disease, injury, or abnormal condition in the claw that jeopardizes the cat's health, where addressing the infection, disease, injury, or abnormal condition is a medical necessity.

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 877

An act to add Section 1798.81.5 to the Civil Code, relating to privacy.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 2004.]

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

SECTION 1. Section 1798.81.5 is added to the Civil Code, to read:

1798.81.5. (a) It is the intent of the Legislature to ensure that personal information about California residents is protected. To that end, the purpose of this section is to encourage businesses that own or license personal information about Californians to provide reasonable security for that information. For the purpose of this section, the phrase ''owns or licenses'' is intended to include, but is not limited to, personal information that a business retains as part of the business' internal customer account or for the purpose of using that information in transactions with the person to whom the information relates.

(b) A business that owns or licenses personal information about a California resident shall implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure.

(c) A business that discloses personal information about a California resident pursuant to a contract with a nonaffiliated third party shall require by contract that the third party implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure.

(d) For purposes of this section:

(1) ''Personal information'' means an individual's first name or first initial and his or her last name in combination with any one or more of the following data elements, when either the name or the date elements are not encrypted or redacted:

(A) Social security number.

(B) Driver's license number or California identification card number.

(C) Account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.

(D) Medical information.

(2) ''Medical information'' means any individually identifiable information, in electronic or physical form, regarding the individual's medical history or medical treatment or diagnosis by a health care professional.

(3) ''Personal information'' does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

(e) The provisions of this section do not apply to any of the following:

(1) A provider of health care, health care service plan, or contractor regulated by the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1).

(2) A financial institution as defined in Section 4052 of the Financial Code and subject to the California Financial Information Privacy Act (Division 1.2 (commencing with Section 4050) of the Financial Code.

(3) A covered entity governed by the medical privacy and security rules issued by the federal Department of Health and Human Services, Parts 160 and 164 of Title 45 of the Code of Federal Regulations, established pursuant to the Health Insurance Portability and Availability Act of 1996 (HIPAA).

(4) An entity that obtains information under an agreement pursuant to Article 3 (commencing with Section 1800) of Chapter 1 of Division

2 of the Vehicle Code and is subject to the confidentiality requirements of the Vehicle Code.

(5) A business that is regulated by state or federal law providing greater protection to personal information than that provided by this section in regard to the subjects addressed by this section. Compliance with that state or federal law shall be deemed compliance with this section with regard to those subjects. This paragraph does not relieve a business from a duty to comply with any other requirements of other state and federal law regarding the protection and privacy of personal information.

CHAPTER 878

An act to add and repeal Part 10 (commencing with Section 12997) of Division 6 of the Water Code, relating to water.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 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 impacts of alluvial fan flooding can be reduced by a better understanding of the public safety risks in alluvial fan floodplains.

(b) Alluvial fans present unique challenges to floodplain management.

(c) Alluvial fan flooding is unpredictable, given its geologic and geomorphic nature.

(d) The principal hazards associated with alluvial fan flooding are the high velocity and uncertainty of the quantity of debris-laden flows and the uncertainty of the flow paths in alluvial fan floodplains.

(e) Many of the alluvial fan floodplains in southern California have experienced development and are projected for additional development.

(f) As a result of the extensive fires in southern California in October 2003, the risk of debris flows from alluvial fan flooding in burned hillsides has increased dramatically.

(g) Alluvial fan flooding contributed to mudflows that took the lives of 16 people on Christmas Day in 2003.

(h) In recognition of the risk to people and property posed by the Christmas Day mudflows and potential future mudflows, the federal disaster declaration for the southern California fires was amended to provide assistance to individuals, businesses, and public entities impacted by fire-related mudslides.

(i) Alluvial fan floodplains exist in the Counties of San Bernardino, Riverside, Los Angeles, Ventura, Santa Barbara, San Luis Obispo, Kern, Orange, Imperial, and San Diego.

(j) To prevent future loss of life and damage to property, it is important that alluvial fans throughout the state be accurately identified, and that landforms be evaluated to identify fan surfaces subject to flooding.

(k) The California Floodplain Management Task Force has recommended that the state establish an alluvial fan task force to review the state of knowledge regarding alluvial fan floodplains, determine future research needs, and, if appropriate, develop recommendations relating to alluvial fan floodplain management.

SEC. 2. Part 10 (commencing with Section 12997) is added to Division 6 of the Water Code, to read:

PART 10. ALLUVIAL FAN TASK FORCE

12997. (a) Not later than June 30, 2005, the director shall establish the Alluvial Fan Task Force with broad membership, to the maximum extent possible, from local, state, and federal government and other stakeholders to review the state of knowledge regarding alluvial fan floodplains, determine future research needs, and prepare recommendations relating to alluvial fan floodplain management, with an emphasis on alluvial fan floodplains that are being considered for development in accordance with local general plans. The director, in consultation with representatives of the Counties of San Bernardino, Riverside, Los Angeles, Ventura, Santa Barbara, San Luis Obispo, Kern, Orange, Imperial, and San Diego, may enter into an interagency agreement with the California State University, the University of California, or other appropriate agency to oversee the task force.

(b) The director shall determine the composition of the task force. The task force may include, but need not be limited to, representatives from all of the following entities or groups, subject to the consent of those entities or groups:

(1) City and county governments in the Counties of San Bernardino, Riverside, Los Angeles, Ventura, Santa Barbara, San Luis Obispo, Kern, Orange, Imperial, and San Diego.

(2) The department.

(3) Other local, state, and federal government agencies and stakeholders that represent relevant environmental, agricultural, and construction interests.

(c) The Alluvial Fan Task Force shall develop a model ordinance on alluvial fan flooding to be made available to communities subject to alluvial fan flooding.

(d) The Alluvial Fan Task Force shall prepare and submit a report, with findings and recommendations, to the Legislature not later than June 30, 2006.

12997.5. This part shall be carried out only to the extent funding is made available from the federal government or private sources to carry out this part. No state funds may be expended to carry out this part.

12998. This part shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

CHAPTER 879

An act to amend Section 42911 of, and to add Chapter 12.7 (commencing with Section 42648) to Part 3 of Division 30 of, the Public Resources Code, relating to recycling.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 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) Effective resource management techniques include preventing the creation of waste through conscientious purchasing of materials, buying recyclable, reusable, compostable, and recycled-content products, and reusing materials and goods, as well as resource recovery through recycling and composting.

(2) Experience in this state and others demonstrates that effective resource management conserves natural resources and reduces the need for additional landfill capacity.

(3) Experience also demonstrates that large venues and large events generate substantial quantities of solid waste, primarily corrugated cardboard, food waste, and compostables such as animal bedding; and reusable and recyclable materials such as beverage containers, paper, and glass.

(4) The community conservation corps has originated innovative recycling programs through partnerships formed with an assortment of schools, public agencies, and local organizations. These partnerships supplement existing services, further state and county waste studies, and assist in establishing conservation goals.

(b) Accordingly, it is the intent of the Legislature, in enacting this act, to do all of the following:

(1) Encourage increased opportunities for effective resource management for all consumers through implementation or reduction, reuse, and recycling plans for large venues and large events, including, but not limited to, large private, nonprofit, or publicly owned stadiums, sports arenas, theaters, halls, amusement parks, zoos, airports, fairgrounds, museums, and other large venue businesses.

(2) Make effective solid waste reduction, reuse, and recycling opportunities available and convenient to consumers, and urge cities and counties to adopt ordinances that facilitate solid waste reduction, reuse, and recycling opportunities at large venues and events, to enhance the overall success of solid waste reduction, reuse, and recycling in the state.

(3) Create a mechanism to aid cities and counties in complying with waste diversion requirements set forth in the California Integrated Waste Management Act of 1989 (Division 30 (commencing with Section 40000) of the Public Resources Code).

(4) Encourage operators of large venues and large events to meet with their local agency's recycling coordinator, or other official designated by a local agency, community conservation corps, recyclers, or the solid waste enterprise providing solid waste handling, whether by exclusive franchise with the local agency or by a permit, contract, or nonexclusive franchise, to do all of the following:

(A) Determine the solid waste reduction, reuse, and recycling programs that are appropriate for the large venue or large event.

(B) Develop solid waste reduction, reuse, and recycling rates, and a plan that would achieve those solid waste reduction, reuse, and recycling rates.

(C) Determine a timeline for implementation of the solid waste reduction, reuse, and recycling plan and solid waste reduction, reuse, and recycling rates.

(5) Encourage operators of large venues and large events to include solid waste reduction, reuse, and recycling elements in their design and operating plans, including, but not limited to, adequate space for waste reduction, reuse, and recycling activities, developing partnerships with community groups to encourage reuse of materials, when appropriate, and negotiating solid waste handling and recycling contracts that promote waste reduction, reuse, and recycling.

(6) Encourage operators of large venues and large events to purchase recyclable, reusable, compostable, and recycled-content products.

SEC. 2. Chapter 12.7 (commencing with Section 42648) is added to Part 3 of Division 30 of the Public Resources Code, to read:

CHAPTER 12.7. LARGE VENUE RECYCLING

42648. For purposes of this chapter, the following definitions apply:

(a) ''Individual'' means a person who works at, or attends, a large venue or large event, or a customer who is seated or served at the large venue or large event.

(b) ''Large event'' means an event that charges an admission price, or is operated by a local agency, and serves an average of more than 2,000 individuals per day of operation of the event, including, but not limited to, a public, nonprofit, or privately owned park, parking lot, golf course, street system, or other open space when being used for an event, including, but not limited to, a sporting event or a flea market.

(c) ''Large venue'' means a permanent venue facility that annually seats or serves an average of more than 2,000 individuals within the grounds of the facility per day of operation of the venue facility. For purposes of this chapter, a venue facility includes, but is not limited to, a public, nonprofit, or privately owned or operated stadium, amphitheater, arena, hall, amusement park, conference or civic center, zoo, aquarium, airport, racetrack, horse track, performing arts center, fairground, museum, theater, or other public attraction facility. For purposes of this chapter, a site under common ownership or control that includes more than one large venue that is contiguous with other large venues in the site, is a single large venue.

(d) ''Local agency'' means a city or county.

42648.1. On or before April 1, 2005, the board shall take all of the following actions:

(a) Make available one or more model ordinances that are suitable for modification by a local agency and that may be adopted by a local agency to facilitate solid waste reduction, reuse, and recycling programs, at large venues and large events in accordance with the requirements of this chapter.

(b) While developing the model ordinance, consult with representatives of the League of California Cities, the California State Association of Counties, recyclers, private and public solid waste services and appropriate personnel involved with the operation and management of large venues and large events.

(c) Post information on the board's Internet Web site on the solid waste reduction, reuse, and recycling programs for implementation by operators of large venues and large events to decrease solid waste and increase diversion of recyclable materials.

(d) Post information on the board's Internet Web site for local agencies, with examples of solid waste reduction, reuse, and recycling programs, including, but not limited to, those operated by community conservation corps.

42648.2. (a) (1) On and after July 1, 2005, when issuing a permit to an operator of a large venue or large event, the local agency shall provide information to the operator on programs that can be

implemented to reduce, reuse, and recycle solid waste materials generated at the venue or event, and provide contact information about where solid waste materials may be donated, recycled, or composted. This information may include, but is not limited to, providing information directing the operator of the large venue or large event to the board's Web site or any other appropriate Web site included by the local agency, direct mailings, brochures, or other relevant literature.

(2) On or before August 1, 2006, and annually thereafter until August 1, 2008, each local agency shall provide the board with an estimate and description of the top 10 percent of large venues and large events within its jurisdiction, based upon amount of solid waste generated, as submitted by operators of large venues and large events pursuant to Section 42648.3. To the extent that the information is readily available to the local agency, the information shall include the name, location, and a brief description of the venue or event, a brief description of the types of wastes generated, types, and estimated amount of materials disposed and diverted, by weight, and existing solid waste reduction, reuse, and recycling programs that the operator of the large venue or large event utilizes to reduce, reuse, and recycle the solid waste. This information shall be reported to the board as a part of the local agency's annual report submitted pursuant to Section 41821.

(b) On or before December 1, 2008, the board shall evaluate the solid waste reduction, reuse, and recycling rates and implementation of waste reduction, reuse, and recycling plans in the top 10 percent of large venues and large events as reported by each local agency pursuant to paragraph (2) of subdivision (a). If the board, upon reviewing the information reported to the board by local agencies pursuant to paragraph (2) of subdivision (a), determines that less than 75 percent of the solid waste reduction, reuse, and recycling plans for the large venues and large events have been prepared or implemented to meet their waste reduction, reuse, and recycling rates developed pursuant to subdivision (a) of Section 42648.4, according to the schedule determined pursuant to subdivision (b) of Section 42468.4, the board shall recommend to the Legislature those statutory changes needed to require operators of large venues and large events to implement waste reduction, reuse, and recycling plans.

42648.3. On or before July 1, 2005, and on or before July 1 annually thereafter, each operator of a large venue or large event shall submit to the local agency, upon request by the local agency, written documentation of waste reduction, reuse, recycling, and diversion programs, if any, implemented at the large venue or large event, and the type and weight of materials diverted and disposed at that large venue or large event. If the operator of a large venue or large event cannot implement a program as provided in the solid waste reduction, reuse, and

recycling plan, the operator shall include a brief explanation for the delay as part of its report to the local agency. The operator of the large venue or large event shall submit the requested information to the local agency, no later than one month from the date the operator receives the request.

42648.4. On or before July 1, 2005, and on or before July 1, biennially thereafter, the operator of a large venue or large event shall meet with recyclers and with the solid waste enterprise that provides solid waste handling services to the large venue or large event, whether by an exclusive franchise with the local agency, or by a permit, contract, or nonexclusive franchise, to determine the solid waste reduction, reuse, and recycling programs that are appropriate for the large venue or large event. In determining feasible solid waste reduction, reuse, and recycling programs, the operator may do any of the following:

(a) Develop solid waste reduction, reuse, and recycling rates and a solid waste reduction, reuse, and recycling plan that would achieve those solid waste reduction, reuse, and recycling rates.

(b) Determine a timeline for implementation of the solid waste reduction, reuse, and recycling plan and solid waste reduction, reuse, and recycling rates.

42648.5. The board shall provide technical assistance and tools to implement this chapter, to the extent feasible under existing financial resources. This technical assistance may include, but is not limited to, model documents, training, research on solid waste management best practices, cost reduction, and innovative products to assist local agencies and operators of large venues and large events to develop and implement effective solid waste reduction, reuse, and recycling plans and rates.

42648.6. If a large venue or large event has contiguous parcels located in both the City of Los Angeles and the County of Los Angeles, the requirements of this chapter shall apply only to the local agency containing the majority of the property for that large venue or event.

42648.7. A local agency may charge and collect a fee from an operator of a large venue or large event in order to recover the local agency's estimated costs incurred in complying with this chapter.

SEC. 3. Section 42911 of the Public Resources Code is amended to read:

42911. (a) Each local agency shall adopt an ordinance relating to adequate areas for collecting and loading recyclable materials in development projects.

(b) If a local agency has not adopted an ordinance for collecting and loading recyclable materials in development projects on or before September 1, 1994, the model ordinance adopted pursuant to Section 42910 shall take effect on September 1, 1994, and shall be enforced by the local agency and have the same force and effect as if adopted by the local agency as an ordinance.

(c) On and after July 1, 2005, a local agency shall not issue a building permit to a development project, unless the development project provides adequate areas for collecting and loading recyclable materials.

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

CHAPTER 880

An act to amend Sections 25211, 25212, and 25404 of, and to add Sections 25211.1, 25211.2, 25211.3, 25211.4, and 25211.5 to, the Health and Safety Code, and to amend Section 42167 of the Public Resources Code, relating to hazardous waste.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 2004.]

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

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

(a) Chapter 3.5 (commencing with Section 42160) of Part 3 of Division 30 of the Public Resources Code was enacted in 1991 to divert large metallic discards, including major appliances and vehicles, from landfills and to ensure that hazardous materials, defined as ''materials that require special handling,'' are removed from metallic discards before they are crushed or shredded for metals recycling.

(b) A May 2004 report by the California Research Bureau, ''Appliance Recycling and Materials Requiring Special Handling: Improving the Effectiveness of the Metallic Discards Act,'' finds that ''there are likely widespread violations'' of the requirement to remove materials that require special handling from appliances, and that compliance is probably weakest for removal of mercury switches and thermostats and PCB capacitors.

(c) The report finds that there is strong circumstantial evidence that violations of Chapter 3.5 (commencing with Section 42160) of Part 3 of Division 30 of the Public Resources Code lead to the release of harmful substances into the environment. The failure to remove hazardous materials from appliances before they are crushed or shredded for metals recycling results in the combustion of mercury, PCBs, and other

hazardous materials in thermal combustion units and the release of these contaminants to land, water, and air.

(d) The report also finds that there are strong incentives for appliance recyclers not to comply with the law, including a lack of inspection and enforcement at appliance recycling facilities and an inability of enforcement agencies to know which facilities are processing appliances for metals recycling. The report recommends that accountability under the act be improved by requiring appliance processors to be licensed and requiring shredders only to accept appliances from licensed parties that certify that materials that require special handling have been removed.

SEC. 2. Section 25211 of the Health and Safety Code is amended to read:

25211. For purposes of this article, the following terms have the following meaning:

(a) ''Certified appliance recycler'' means a person or entity engaged in the business of removing and properly managing materials that require special handling from discarded major appliances, and who is certified pursuant to Section 25211.4, and does not include a person described in subdivision (b) of Section 25211.2.

(b) ''CUPA'' means a certified unified program agency, as defined in subdivision (b) of Section 25123.7.

(c) ''Major appliance'' has the same meaning as defined in Section 42166 of the Public Resources Code.

(d) ''Materials that require special handling'' has the same meaning as defined in Section 42167 of the Public Resources Code.

(e) ''Scrap recycling facility'' means a facility where machinery and equipment are used for processing and manufacturing scrap metal into prepared grades and whose principal product is scrap iron or nonferrous metallic scrap for sale for remelting purposes. A scrap recycling facility includes, but is not limited to, a feeder yard, a metal shredding facility, a metal crusher, and a metal baler.

SEC. 3. Section 25211.1 is added to the Health and Safety Code, to read:

25211.1. On and after January 1, 2006, no person other than a certified appliance recycler shall do either of the following:

(a) Remove materials that require special handling from major appliances pursuant to subdivision (a) of Section 25212.

(b) Transport, deliver, or sell discarded major appliances to a scrap recycling facility, except as provided in subdivision (b) of Section 25211.2.

SEC. 4. Section 25211.2 is added to the Health and Safety Code, to read:

25211.2. (a) On and after January 1, 2006, except as provided in subdivision (b), a person who transports, delivers, or sells discarded

major appliances to a scrap recycling facility shall provide evidence that he or she is a certified appliance recycler and shall certify, on a form prepared by the department and provided to the facility at the time of the transaction, that all materials that require special handling have been removed from the appliances pursuant to subdivision (a) of Section 25212. Information on the form shall include, but not be limited to, the appliance recycler certificate number, the appliance recycler's hazardous waste generator identification number, the number and types of appliances included in the shipment, and the facilities to which the materials that require special handling that were removed from the appliances were sent or are to be sent.

(b) A person who is not a certified appliance recycler may transport, deliver, or sell discarded major appliances to a scrap recycling facility only if the condition specified in paragraph (1) or (2) is met:

(1) (A) The appliances have not been crushed, baled, shredded, sawed or sheared apart, or otherwise processed in such a manner that could result in the release, or prevent the removal, of materials that require special handling.

(B) The scrap recycling facility is a certified appliance recycler.

(2)(A) The appliances have been crushed, baled, shredded, or sawed or sheared apart.

(B) The person provides the scrap recycling facility written evidence from a certified appliance recycler, as required in subdivision (a), that all materials that require special handling were removed from the appliances in compliance with subdivision (a) of Section 25212.

(c) On and after January 1, 2006, except as provided in subdivision (b), a scrap recycling facility shall not accept a discarded major appliance from a person who is not a certified appliance recycler.

SEC. 5. Section 25211.3 is added to the Health and Safety Code, to read:

25211.3. A certified appliance recycler, and any person who is not a certified appliance recycler who is subject to subdivision (b) or (c) of Section 25211.2, shall retain onsite records demonstrating compliance with applicable requirements of this article and Section 42175 of the Public Resources Code. The records shall be retained for three years and shall be made available for inspection, upon the request of a representative of the department or a CUPA. The records shall be retained, after that three-year period, during the course of an unresolved enforcement action or as requested by the department or CUPA. The records shall include, but not be limited to, all of the following information:

(a) The amount, by volume or weight or both, as determined by the department, of each material that required special handling.

(b) The method used by the appliance recycler to recycle, dispose of, or otherwise manage each material that required special handling, including the name and address of the facility to which each material was sent.

SEC. 6. Section 25211.4 is added to the Health and Safety Code to read:

25211.4. (a) On and after July 1, 2005, a person wishing to operate as a certified appliance recycler shall submit an application to the department and obtain certification from the department pursuant to this section. On or before May 1, 2005, the department shall make available on its Web site an application for certification as a certified appliance recycler that includes all of the following:

(1) The business name under which the appliance recycler operates, and the business owner's name, address, and telephone number.

(2) A hazardous waste generator identification number issued by the department pursuant to this chapter.

(3) A statement indicating that the applicant has either filed an application for a stormwater permit or is not required to obtain a stormwater permit.

(4) A statement indicating that the applicant has either filed a hazardous materials business plan or is not required to file the plan.

(5) The tax identification number assigned by the Franchise Tax Board.

(6) A copy of a business license and any conditional use permits issues by the appropriate city or county.

(7) A description of the ability of the applicant to properly remove and manage all materials that require special handling, including, but not limited to, a technical description of all equipment used in removing and managing the materials and the training provided to personnel engaged in the removal and managing of the materials.

(8) Any other information that the department may determine to be necessary to carry out this article.

(b) A person wishing to operate as a certified appliance recycler shall submit to the department, under penalty of perjury, the information required pursuant to subdivision (a). The department shall review the application for completeness and, upon determining that the application is complete and meets the requirements of this section, shall issue a numbered certificate to the applicant. The department shall notify an applicant whose application fails to meet the requirements for certification of the reason why the department denied the certification. The department may revoke or suspend a certification issued pursuant to this section, in accordance with the procedures specified in Sections 25186.1 and 25186.2, for any of the grounds specified in Section 25186.

(c) The certificate issued by the department shall include the issuance date and the expiration date, which shall be three years after the issuance date. A person whose certification has expired, and who has not applied for and obtained a new current certification, is no longer a certified appliance recycler and may no longer operate as a certified appliance recycler.

(d) Upon issuance of a certificate, the department shall transmit the application and certification of the certified appliance recycler to the certified uniform program agency in whose jurisdiction the person is located, which shall, as soon as is practicable, inspect the certified appliance recycling facility to determine whether the recycler is capable of properly removing and managing materials that require special handling from major appliances. In making the determination, the certified uniform program agency shall consider various factors, including, but not limited to, the working condition of equipment used to remove the materials, the technical ability of employees of the business to operate the equipment proficiently, and the facility's compliance with existing applicable laws.

SEC. 7. Section 25211.5 is added to the Health and Safety Code, to read:

25211.5. The department may adopt any regulations determined necessary to implement and enforce this article.

SEC. 8. Section 25212 of the Health and Safety Code is amended to read:

25212. (a) Materials that require special handling that are contained in major appliances shall not be disposed of at a solid waste facility and shall be removed from major appliances in which they are contained prior to the appliance being crushed, baled, shredded, sawed or sheared apart, disposed of, or otherwise processed in a manner that could result in the release or prevent the removal of materials that require special handling.

(b) A person who, pursuant to subdivision (a), removes from a major appliance any material that requires special handling, that is a hazardous waste under this chapter, is a hazardous waste generator and shall comply with all provisions of this chapter applicable to generators of hazardous waste.

(c) All materials that require special handling that have been removed from a major appliance pursuant to subdivision (a), and that are hazardous wastes, shall be managed in accordance with this chapter.

(d) A person who fails to comply with subdivision (a) is in violation of this chapter.

(e) (1) The department or a local health officer or other public officer authorized pursuant to Article 8 (commencing with Section 25180), including, when applicable, a certified unified program agency (CUPA)

or a unified program agency within the jurisdiction of a CUPA, shall incorporate both of the following into the existing inspection and enforcement activities of the department or the local health officer or other public officer:

(A) The regulation of materials that require special handling that, when removed from a major appliance, is hazardous waste.

(B) The enforcement of subdivision (a).

(2) The department, local health officers, or other public officers shall coordinate their activities as needed to identify and regulate materials that require special handling that, when removed from major appliances, are hazardous wastes that are transported from one jurisdiction to another.

SEC. 9. Section 25404 of the Health and Safety Code, as amended by Section 1.5 of Chapter 696 of the Statutes of 2003, is amended to read:

25404. (a) For purposes of this chapter, the following terms shall have the following meanings:

(1) (A) ''Certified Unified Program Agency'' or ''CUPA'' means the agency certified by the secretary to implement the unified program specified in this chapter within a jurisdiction.

(B) ''Participating Agency'' or ''PA'' means a state or local agency that has a written agreement with the CUPA pursuant to subdivision (d) of Section 25404.3, and is approved by the secretary, to implement or enforce one or more of the unified program elements specified in subdivision (c), in accordance with Sections 25404.1 and 25404.2.

(C) ''Unified Program Agency'' or ''UPA'' means the CUPA, or its participating agencies to the extent each PA has been designated by the CUPA, pursuant to a written agreement, to implement or enforce a particular unified program element specified in subdivision (c). The UPAs have the responsibility and authority to implement and enforce the requirements listed in subdivision (c), and the regulations adopted to implement the requirements listed in subdivision (c), to the extent provided by Chapter 6.5 (commencing with Section 25100), Chapter 6.67 (commencing with Section 25270), Chapter 6.7 (commencing with Section 25280), Chapter 6.95 (commencing with Section 25500), and Sections 25404.1 and 25404.2. After a CUPA has been certified by the secretary, the unified program agencies and the state agencies carrying out responsibilities under this chapter shall be the only agencies authorized to enforce the requirements listed in subdivision (c) within the jurisdiction of the CUPA.

(2) ''Department'' means the Department of Toxic Substances Control.

(3) ''Minor violation'' means the failure of a person to comply with any requirement or condition of any applicable law, regulation, permit, information request, order, variance, or other requirement, whether

procedural or substantive, of the unified program that the UPA is authorized to implement or enforce pursuant to this chapter, and that does not otherwise include any of the following:

(A) A violation that results in injury to persons or property, or that presents a significant threat to human health or the environment.

(B) A knowing willful or intentional violation.

(C) A violation that is a chronic violation, or that is committed by a recalcitrant violator. In determining whether a violation is chronic or a violator is recalcitrant, the UPA shall consider whether there is evidence indicating that the violator has engaged in a pattern of neglect or disregard with respect to applicable regulatory requirements.

(D) A violation that results in an emergency response from a public safety agency.

(E) A violation that enables the violator to benefit economically from the noncompliance, either by reduced costs or competitive advantage.

(F) A class I violation as provided in Section 25117.6.

(G) A class II violation committed by a chronic or a recalcitrant violator, as provided in Section 25117.6.

(H) A violation that hinders the ability of the UPA to determine compliance with any other applicable local, state, or federal rule, regulation, information request, order, variance, permit, or other requirement.

(4) ''Secretary'' means the Secretary for Environmental Protection.

(5) ''Unified program facility'' means all contiguous land and structures, other appurtenances, and improvements on the land that are subject to the requirements listed in subdivision (c).

(6) ''Unified program facility permit'' means a permit issued pursuant to this chapter. For the purposes of this chapter, a unified program facility permit encompasses the permitting requirements of Section 25284, and any permit or authorization requirements under any local ordinance or regulation relating to the generation or handling of hazardous waste or hazardous materials, but does not encompass the permitting requirements of a local ordinance that incorporates provisions of the Uniform Fire Code or the Uniform Building Code.

(b) The secretary shall adopt implementing regulations and implement a unified hazardous waste and hazardous materials management regulatory program, which shall be known as the unified program, after holding an appropriate number of public hearings throughout the state. The unified program shall be developed in close consultation with the director, the Director of the Office of Emergency Services, the State Fire Marshal, the executive officers and chairpersons of the State Water Resources Control Board and the California regional water quality control boards, the local health officers, local fire services, and other appropriate officers of interested local agencies, and affected

businesses and interested members of the public, including environmental organizations.

(c) The unified program shall consolidate the administration of the following requirements, and shall, to the maximum extent feasible within statutory constraints, ensure the coordination and consistency of any regulations adopted pursuant to those requirements:

(1) (A) Except as provided in subparagraphs (B) and (C), the requirements of Chapter 6.5 (commencing with Section 25100), and the regulations adopted by the department pursuant thereto, applicable to all of the following:

(i) Hazardous waste generators, persons operating pursuant to a permit-by-rule, conditional authorization, or conditional exemption, pursuant to Chapter 6.5 (commencing with Section 25100) or the regulations adopted by the department.

(ii) Persons managing perchlorate materials.

(iii) Persons subject to Article 10.1 (commencing with Section 25211) of Chapter 6.5.

(B) The unified program shall not include the requirements of paragraph (3) of subdivision (c) of Section 25200.3, the requirements of Sections 25200.10 and 25200.14, and the authority to issue an order under Sections 25187 and 25187.1, with regard to those portions of a unified program facility that are subject to one of the following:

(i) A corrective action order issued by the department pursuant to Section 25187.

(ii) An order issued by the department pursuant to Chapter 6.8 (commencing with Section 25300) or Chapter 6.85 (commencing with Section 25396).

(iii) A remedial action plan approved pursuant to Chapter 6.8 (commencing with Section 25300) or Chapter 6.85 (commencing with Section 25396).

(iv) A cleanup and abatement order issued by a California regional water quality control board pursuant to Section 13304 of the Water Code, to the extent that the cleanup and abatement order addresses the requirements of the applicable section or sections listed in this subparagraph.

(v) Corrective action required under subsection (u) of Section 6924 of Title 42 of the United States Code or subsection (h) of Section 6928 of Title 42 of the United States Code.

(vi) An environmental assessment pursuant to Section 25200.14 or a corrective action pursuant to Section 25200.10 or paragraph (3) of subdivision (c) of Section 25200.3, that is being overseen by the department.

(C) The unified program shall not include the requirements of Chapter 6.5 (commencing with Section 25100), and the regulations

adopted by the department pursuant thereto, applicable to persons operating transportable treatment units, except that any required notice regarding transportable treatment units shall also be provided to the CUPAs.

(2) The requirement of subdivision (c) of Section 25270.5 for owners and operators of aboveground storage tanks to prepare a spill prevention control and countermeasure plan.

(3) (A) Except as provided in subparagraphs (B) and (C), the requirements of Chapter 6.7 (commencing with Section 25280) concerning underground storage tanks and the requirements of any underground storage tank ordinance adopted by a city or county.

(B) The unified program may not include the responsibilities assigned to the State Water Resources Control Board pursuant to Section 25297.1.

(C) The unified program may not include the corrective action requirements of Sections 25296.10 to 25296.40, inclusive.

(4) The requirements of Article 1 (commencing with Section 25500) of Chapter 6.95 concerning hazardous material release response plans and inventories.

(5) The requirements of Article 2 (commencing with Section 25531) of Chapter 6.95, concerning the accidental release prevention program.

(6) The requirements of subdivisions (b) and (c) of Section 80.103 of the Uniform Fire Code, as adopted by the State Fire Marshal pursuant to Section 13143.9 concerning hazardous material management plans and inventories.

(d) To the maximum extent feasible within statutory constraints, the secretary shall consolidate, coordinate, and make consistent these requirements of the unified program with other requirements imposed by other federal, state, regional, or local agencies upon facilities regulated by the unified program.

(e) (1) The secretary shall establish standards applicable to CUPAs, participating agencies, state agencies, and businesses specifying the data to be collected and submitted by unified program agencies in administering the programs listed in subdivision (c). Those standards shall incorporate any standard developed under Section 25503.3.

(2) The secretary shall establish an electronic geographic information management system capable of receiving all data collected by the unified program agencies pursuant to this subdivision and Section 25504.1. The secretary shall make all nonconfidential data available on the Internet.

(3) (A) As funding becomes available, the secretary shall establish, consistent with paragraph (2), and thereafter maintain, a statewide database.

(B) The secretary, or one or more of the boards, departments, or offices within the California Environmental Protection Agency, shall seek available federal funding for purposes of implementing this subdivision.

(4) Once the statewide database is established, the secretary shall work with the CUPAs to develop a phased-in schedule for the electronic collection and submittal of information to be included in the statewide database, giving first priority to information relating to those chemicals determined by the secretary to be of greatest concern. The secretary, in making this determination shall consult with the CUPAs, the Office of Emergency Services, the State Fire Marshal, and the boards, departments, and offices within the California Environmental Protection Agency. The information initially included in the statewide database shall include, but is not limited to, the hazardous materials inventory information required to be submitted pursuant to Section 25504.1 for perchlorate materials.

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

SEC. 10. Section 25404 of the Health and Safety Code, as amended by Section 2.5 of Chapter 696 of the Statutes of 2003, is amended to read:

25404. (a) For purposes of this chapter, the following terms shall have the following meanings:

(1) (A) ''Certified Unified Program Agency'' or ''CUPA'' means the agency certified by the secretary to implement the unified program specified in this chapter within a jurisdiction.

(B) ''Participating Agency'' or ''PA'' means a state or local agency that has a written agreement with the CUPA pursuant to subdivision (d) of Section 25404.3, and is approved by the secretary, to implement or enforce one or more of the unified program elements specified in subdivision (c), in accordance with Sections 25404.1 and 25404.2.

(C) ''Unified Program Agency'' or ''UPA'' means the CUPA, or its participating agencies to the extent each PA has been designated by the CUPA, pursuant to a written agreement, to implement or enforce a particular unified program element specified in subdivision (c). The UPAs have the responsibility and authority to implement and enforce the requirements listed in subdivision (c), and the regulations adopted to implement the requirements listed in subdivision (c), to the extent provided by Chapter 6.5 (commencing with Section 25100), Chapter 6.67 (commencing with Section 25270), Chapter 6.7 (commencing with Section 25280), Chapter 6.95 (commencing with Section 25500), and Sections 25404.1 and 25404.2. After a CUPA has been certified by the secretary, the unified program agencies and the state agencies carrying out responsibilities under this chapter shall be the only agencies

authorized to enforce the requirements listed in subdivision (c) within the jurisdiction of the CUPA.

(2) ''Department'' means the Department of Toxic Substances Control.

(3) ''Secretary'' means the Secretary for Environmental Protection.

(4) ''Unified program facility'' means all contiguous land and structures, other appurtenances, and improvements on the land that are subject to the requirements listed in subdivision (c).

(5) ''Unified program facility permit'' means a permit issued pursuant to this chapter. For the purposes of this chapter, a unified program facility permit encompasses the permitting requirements of Section 25284, and any permit or authorization requirements under any local ordinance or regulation relating to the generation or handling of hazardous waste or hazardous materials, but does not encompass the permitting requirements of a local ordinance that incorporates provisions of the Uniform Fire Code or the Uniform Building Code.

(b) The secretary shall adopt implementing regulations and implement a unified hazardous waste and hazardous materials management regulatory program, which shall be known as the unified program, after holding an appropriate number of public hearings throughout the state. The unified program shall be developed in close consultation with the director, the Director of the Office of Emergency Services, the State Fire Marshal, the executive officers and chairpersons of the State Water Resources Control Board and the California regional water quality control boards, the local health officers, local fire services, and other appropriate officers of interested local agencies, and affected businesses and interested members of the public, including environmental organizations.

(c) The unified program shall consolidate the administration of the following requirements, and shall, to the maximum extent feasible within statutory constraints, ensure the coordination and consistency of any regulations adopted pursuant to those requirements:

(1) (A) Except as provided in subparagraphs (B) and (C), the requirements of Chapter 6.5 (commencing with Section 25100), and the regulations adopted by the department pursuant thereto, applicable to all of the following:

(i) Hazardous waste generators, persons operating pursuant to a permit-by-rule, conditional authorization, or conditional exemption, pursuant to Chapter 6.5 (commencing with Section 25100) or the regulations adopted by the department.

(ii) Persons managing perchlorate materials.

(iii) Persons subject to Article 10.1 (commencing with Section 25211) of Chapter 6.5.

(B) The unified program shall not include the requirements of paragraph (3) of subdivision (c) of Section 25200.3, the requirements of Sections 25200.10 and 25200.14, and the authority to issue an order under Sections 25187 and 25187.1, with regard to those portions of a unified program facility that are subject to one of the following:

(i) A corrective action order issued by the department pursuant to Section 25187.

(ii) An order issued by the department pursuant to Chapter 6.8 (commencing with Section 25300) or Chapter 6.85 (commencing with Section 25396).

(iii) A remedial action plan approved pursuant to Chapter 6.8 (commencing with Section 25300) or Chapter 6.85 (commencing with Section 25396).

(iv) A cleanup and abatement order issued by a California regional water quality control board pursuant to Section 13304 of the Water Code, to the extent that the cleanup and abatement order addresses the requirements of the applicable section or sections listed in this subparagraph.

(v) Corrective action required under subsection (u) of Section 6924 of Title 42 of the United States Code or subsection (h) of Section 6928 of Title 42 of the United States Code.

(vi) An environmental assessment pursuant to Section 25200.14 or a corrective action pursuant to Section 25200.10 or paragraph (3) of subdivision (c) of Section 25200.3, that is being overseen by the department.

(C) The unified program shall not include the requirements of Chapter 6.5 (commencing with Section 25100), and the regulations adopted by the department pursuant thereto, applicable to persons operating transportable treatment units, except that any required notice regarding transportable treatment units shall also be provided to the CUPAs.

(2) The requirement of subdivision (c) of Section 25270.5 for owners and operators of aboveground storage tanks to prepare a spill prevention control and countermeasure plan.

(3) (A) Except as provided in subparagraphs (B) and (C), the requirements of Chapter 6.7 (commencing with Section 25280) concerning underground storage tanks and the requirements of any underground storage tank ordinance adopted by a city or county.

(B) The unified program may not include the responsibilities assigned to the State Water Resources Control Board pursuant to Section 25297.1.

(C) The unified program may not include the corrective action requirements of Sections 25296.10 to 25296.40, inclusive.

(4) The requirements of Article 1 (commencing with Section 25501) of Chapter 6.95 concerning hazardous material release response plans and inventories.

(5) The requirements of Article 2 (commencing with Section 25531) of Chapter 6.95, concerning the accidental release prevention program.

(6) The requirements of subdivisions (b) and (c) of Section 80.103 of the Uniform Fire Code, as adopted by the State Fire Marshal pursuant to Section 13143.9, concerning hazardous material management plans and inventories.

(d) To the maximum extent feasible within statutory constraints, the secretary shall consolidate, coordinate, and make consistent these requirements of the unified program with other requirements imposed by other federal, state, regional, or local agencies upon facilities regulated by the unified program.

(e) (1) The secretary shall establish standards applicable to CUPAs, participating agencies, state agencies, and businesses specifying the data to be collected and submitted by unified program agencies in administering the programs listed in subdivision (c). Those standards shall incorporate any standard developed under Section 25503.3.

(2) The secretary shall establish an electronic geographic information management system capable of receiving all data collected by the unified program agencies pursuant to this subdivision and Section 25504.1. The secretary shall make all nonconfidential data available on the Internet.

(3) (A) As funding becomes available, the secretary shall establish, consistent with paragraph (2), and thereafter maintain, a statewide database.

(B) The secretary, or one or more of the boards, departments, or offices within the California Environmental Protection Agency, shall seek available federal funding for purposes of implementing this subdivision.

(4) Once the statewide database is established, the secretary shall work with the CUPAs to develop a phased-in schedule for the electronic collection and submittal of information to be included in the statewide database, giving first priority to information relating to those chemicals determined by the secretary to be of greatest concern. The secretary in making this determination shall consult with the CUPAs, the Office of Emergency Services, the State Fire Marshal, and the boards, departments, and offices within the California Environmental Protection Agency. The information initially included in the statewide database shall include, but is not limited to, the hazardous materials inventory information required to be submitted pursuant to Section 25504.1 for perchlorate materials.

(f) This section shall become operative January 1, 2006.

SEC. 11. Section 42167 of the Public Resources Code is amended to read:

42167. ''Materials that require special handling'' means all of the following:

(a) Sodium azide canisters in unspent airbags that are determined to be hazardous by federal and state law or regulation.

(b) Encapsulated polychlorinated biphenyls (PCBs), Di(2-Ethylhexylphthalate) (DEHP), and metal encased capacitors, in major appliances.

(c) Chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), and other non-CFC replacement refrigerants, injected in air-conditioning/refrigeration units.

(d) Used oil, as defined in subparagraph (A) of paragraph (1) of subdivision (a) of Section 25250.1 of the Health and Safety Code, in major appliances. Materials described in subparagraph (B) of paragraph (1) of subdivision (a) of Section 25250.1 of the Health and Safety Code are not excluded from the definition of used oil for the purposes of this section.

(e) Mercury found in switches and temperature control devices in major appliances.

(f) Any other material that, when removed from a major appliance, is a hazardous waste regulated pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

SEC. 12. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution or because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

CHAPTER 881

An act to amend and repeal Sections 5500 and 5501 of, and to add and repeal Section 5513 of, the Public Utilities Code, relating to commercial air carriers, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 2004. Filed with
Secretary of State September 29, 2004.]

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

SECTION 1. Section 5500 of the Public Utilities Code is amended to read:

5500. (a) As used in this article, ''commercial air operator'' means any person owning, controlling, operating, renting, or managing aircraft for any commercial purpose for compensation. ''Commercial air operator'' does not include any person owning, controlling, operating, renting, managing, furnishing, or otherwise providing transportation by hot air balloon for entertainment or recreational purposes.

(b) This section shall remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends that date.

SEC. 1.5. Section 5500 of the Public Utilities Code is amended to read:

5500. (a) As used in this article, ''commercial air operator'' means any person owning, controlling, operating, renting, or managing aircraft for any commercial purpose for compensation.

(b) This section shall become operative on January 1, 2009.

SEC. 2. Section 5501 of the Public Utilities Code is amended to read:

5501. (a) As used in this article, ''aircraft'' means any contrivance used for navigation of, or flight in, the air. ''Aircraft'' does not include a hot air balloon furnished or providing transportation for entertainment or recreational purposes.

(b) This section shall remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends that date.

SEC. 2.5. Section 5501 of the Public Utilities Code is amended to read:

5501. (a) As used in this article, ''aircraft'' means any contrivance used for navigation of, or flight in, the air.

(b) This section shall become operative on January 1, 2009.

SEC. 3. Section 5513 is added to the Public Utilities Code, to read:

5513. (a) Notwithstanding any other provision of this article, any person owning, controlling, operating, renting, managing, furnishing, or otherwise providing transportation by hot air balloon for hire, for entertainment or recreational purposes, shall maintain in force at least one million dollars ($1,000,000) of liability insurance for personal injury, wrongful death, and property damage resulting from the operation of a balloon carrying up to 10 passengers, with additional

liability coverage of one hundred thousand dollars ($100,000) for each passenger for any balloon carrying more than 10 passengers. A notice shall be provided to every passenger that identifies both the insurer providing a policy of liability insurance to the person providing that transportation and the amount of insurance coverage provided by that policy.

(b) Any person owning, controlling, operating, renting, managing, furnishing, or otherwise providing transportation by hot air balloon for hire, for entertainment or recreational purposes, shall comply with any requirement of a city, county, or city and county that the person obtain a business license as a condition for operating in that city, county, or city and county. Whenever a city, county, or city and county requires a business license, any person owning, controlling, operating, renting, managing, furnishing, or otherwise providing transportation by hot air balloon for hire, for entertainment or recreational purposes, shall prominently display the license at the person's primary place of business frequented by customers and potential customers. Whenever a city, county, or city and county requires a business license, the person shall provide to the city, county, or city and county, a currently effective certificate of insurance evidencing insurance coverage as required in subdivision (a). A new certificate of insurance shall be provided to the city, county, or city and county, at least annually or whenever there is a material change in insurance coverage. A city, county, or city and county shall give reasonable notice of this requirement with any business license renewal notification. Every business license issued by a city, county, or city and county to any person owning, controlling, operating, renting, managing, furnishing, or otherwise providing transportation by hot air balloon for hire, for entertainment or recreational purposes, and every currently effective certificate of insurance evidencing insurance coverage, shall be maintained as a public record. The city, county, or city and county may charge a reasonable fee for purposes of carrying out the provisions of this subdivision.

(c) Any person who violates subdivision (a) by failing to maintain insurance in force as required by subdivision (a) is guilty of a misdemeanor. Any person who violates subdivision (b) by failing to obtain and maintain a current valid city, county, or city and county business license issued by the local government jurisdiction where the person's primary place of business is located, in accordance with subdivision (b), is guilty of a misdemeanor.

(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. 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 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. Moreover, reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 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:

The Public Utilities Commission currently requires the hot air balloon industry in this state to obtain liability insurance equivalent to that required for commercial airlines. Hot air balloon companies cannot get the required insurance due to spiraling insurance costs and a dwindling number of insurers. In order to allow hot air balloon companies to seek more reasonable liability insurance appropriate to the industry, and thereby making it possible for those companies to stay in business, it is necessary that this act take effect immediately.

CHAPTER 882

An act to amend Section 6254 of the Government Code, and to amend Sections 4800 and 4805 of, and to amend and renumber Section 4716 of, the Probate Code, relating to advance health care directives.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 2004.]

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

SECTION 1. Section 6254 of the Government Code, as amended by Chapter 228 of the Statutes of 2004, 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. The committee shall maintain the confidentiality of the contracts and amendments until the time a contract or amendment is fully open to inspection by the public.

(r) Records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals that has been transmitted to the State Department of Health Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

(t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, or the records of a municipal hospital, formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Division 3 of Title 4 of this code, that relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 or 11512 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

(u) (1) Information contained in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department that indicates when or where the applicant is vulnerable to attack or that concerns the applicant's medical or psychological history or that of members of his or her family.

(2) The home address and telephone number of peace officers, judges, court commissioners, and magistrates that are set forth in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department.

(3) The home address and telephone number of peace officers, judges, court commissioners, and magistrates that are set forth in licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department.

(v) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Part 6.3 (commencing with Section 12695) and Part 6.5 (commencing with Section 12700) of Division 2 of

the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Part 6.3 (commencing with Section 12695) or Part 6.5 (commencing with Section 12700) of Division 2 of the Insurance Code, on or after July 1, 1991, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract for health coverage that is entered into prior to July 1, 1991, is amended on or after July 1, 1991, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (3).

(w) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open to inspection one year after they have been fully executed.

(3) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto, until the

contract or amendments to a contract is open to inspection pursuant to paragraph (2).

(x) Financial data contained in applications for registration, or registration renewal, as a service contractor filed with the Director of the Department of Consumer Affairs pursuant to Chapter 20 (commencing with Section 9800) of Division 3 of the Business and Professions Code, for the purpose of establishing the service contractor's net worth, or financial data regarding the funded accounts held in escrow for service contracts held in force in this state by a service contractor.

(y) (1) Records of the Managed Risk Medical Insurance Board related to activities governed by Part 6.2 (commencing with Section 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts entered into pursuant to Part 6.2 (commencing with Section 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code, on or after January 1, 1998, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract entered into pursuant to Part 6.2 (commencing with Section 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code is amended, the amendment shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto until the contract or amendments to a contract are open to inspection pursuant to paragraph (2) or (3).

(5) The exemption from disclosure provided pursuant to this subdivision for the contracts, deliberative processes, discussions, communications, negotiations with health plans, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff shall also apply to the contracts, deliberative processes, discussions, communications, negotiations with health plans, impressions, opinions, recommendations, meeting

minutes, research, work product, theories, or strategy of applicants pursuant to Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code.

(z) Records obtained pursuant to paragraph (2) of subdivision (c) of Section 2891.1 of the Public Utilities Code.

(aa) A document prepared by 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).

(cc) All information provided to the Secretary of State by a person for the purpose of registration in the Advance Health Care Directive Registry, except that those records shall be released at the request of a health care provider, a public guardian, or the registrant's legal representative.

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. 1.5. Section 6254 of the Government Code, as amended by Chapter 228 of the Statutes of 2004, 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 may not be used directly or indirectly, or furnished to another, 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. Nothing is this paragraph shall be construed to prohibit or limit a scholarly, journalistic, political, or governmental use of address information obtained pursuant to this paragraph.

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided for in Chapter 3 (commencing with Section 99150) of Part 65 of the Education Code.

(h) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. However, the law of eminent domain shall not be affected by this provision.

(i) Information required from any taxpayer in connection with the collection of local taxes that is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.

(j) Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or

exhibition purposes. The exemption in this subdivision shall not apply to records of fines imposed on the borrowers.

(k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

(*l*) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's Legal Affairs Secretary, provided that public records shall not be transferred to the custody of the Governor's Legal Affairs Secretary to evade the disclosure provisions of this chapter.

(m) In the custody of or maintained by the Legislative Counsel, except those records in the public database maintained by the Legislative Counsel that are described in Section 10248.

(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish his or her personal qualification for the license, certificate, or permit applied for.

(o) Financial data contained in applications for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, where an authorized officer of the California Pollution Control Financing Authority determines that disclosure of the financial data would be competitively injurious to the applicant and the data is required in order to obtain guarantees from the United States Small Business Administration. The California Pollution Control Financing Authority shall adopt rules for review of individual requests for confidentiality under this section and for making available to the public those portions of an application that are subject to disclosure under this chapter.

(p) Records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), and Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, that reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or that provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under these chapters. Nothing in this subdivision shall be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this subdivision.

(q) Records of state agencies related to activities governed by Article 2.6 (commencing with Section 14081), Article 2.8 (commencing with Section 14087.5), and Article 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, that reveal the special negotiator's deliberative processes, discussions,

communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or that provide instruction, advice, or training to employees.

Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. In the event that a contract for inpatient services that is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance Commission enters into contracts with health care providers for other than inpatient hospital services, those contracts shall be open to inspection one year after they are fully executed.

Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

Notwithstanding any other provision of law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments until the time a contract or amendment is fully open to inspection by the public.

(r) Records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals that has been transmitted to the State Department of Health Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

(t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, or the records of a municipal hospital, formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Division 3 of Title 4 of this code, that relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 or 11512 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

(u) (1) Information contained in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department that indicates when or where the applicant is vulnerable to attack or that concerns the applicant's medical or psychological history or that of members of his or her family.

(2) The home address and telephone number of peace officers, judges, court commissioners, and magistrates that are set forth in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department.

(3) The home address and telephone number of peace officers, judges, court commissioners, and magistrates that are set forth in licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department.

(v) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Part 6.3 (commencing with Section 12695) and Part 6.5 (commencing with Section 12700) of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Part 6.3 (commencing with Section 12695) or Part 6.5 (commencing with Section 12700) of Division 2 of the Insurance Code, on or after July 1, 1991, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract for health coverage that is entered into prior to July 1, 1991, is amended on or after July 1, 1991, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (3).

(w) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions,

opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open to inspection one year after they have been fully executed.

(3) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (2).

(x) Financial data contained in applications for registration, or registration renewal, as a service contractor filed with the Director of the Department of Consumer Affairs pursuant to Chapter 20 (commencing with Section 9800) of Division 3 of the Business and Professions Code, for the purpose of establishing the service contractor's net worth, or financial data regarding the funded accounts held in escrow for service contracts held in force in this state by a service contractor.

(y) (1) Records of the Managed Risk Medical Insurance Board related to activities governed by Part 6.2 (commencing with Section 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts entered into pursuant to Part 6.2 (commencing with Section 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code, on or after January 1, 1998, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract entered into pursuant to Part 6.2 (commencing with Section 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code is amended, the amendment shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto until the contract or amendments to a contract are open to inspection pursuant to paragraph (2) or (3).

(5) The exemption from disclosure provided pursuant to this subdivision for the contracts, deliberative processes, discussions, communications, negotiations with health plans, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff shall also apply to the contracts, deliberative processes, discussions, communications, negotiations with health plans, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of applicants pursuant to Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code.

(z) Records obtained pursuant to paragraph (2) of subdivision (c) of Section 2891.1 of the Public Utilities Code.

(aa) A document prepared by 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).

(cc) All information provided to the Secretary of State by a person for the purpose of registration in the Advance Health Care Directive Registry, except that those records shall be released at the request of a health care provider, a public guardian, or the registrant's legal representative.

Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

Nothing in this section prevents any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act.

SEC. 2. Section 4716 of the Probate Code, as added by Chapter 329 of the Statutes of 2001, is amended and renumbered to read:

4717. (a) Notwithstanding any other provision of law, within 24 hours of the arrival in the emergency department of a general acute care hospital of a patient who is unconscious or otherwise incapable of communication, the hospital shall make reasonable efforts to contact the patient's agent, surrogate, or a family member or other person the hospital reasonably believes has the authority to make health care decisions on behalf of the patient. A hospital shall be deemed to have made reasonable efforts, and to have discharged its duty under this section, if it does all of the following:

(1) Examines the personal effects, if any, accompanying the patient and any medical records regarding the patient in its possession, and reviews any verbal or written report made by emergency medical technicians or the police, to identify the name of any agent, surrogate, or a family member or other person the hospital reasonably believes has the authority to make health care decisions on behalf of the patient.

(2) Contacts or attempts to contact any agent, surrogate, or a family member or other person the hospital reasonably believes has the authority to make health care decisions on behalf of the patient, as identified in paragraph (1).

(3) Contacts the Secretary of State directly or indirectly, including by voice mail or facsimile, to inquire whether the patient has registered an advance health care directive with the Advance Health Care Directive Registry, if the hospital finds evidence of the patient's Advance Health Care Directive Registry identification card either from the patient or from the patient's family or authorized agent.

(b) The hospital shall document in the patient's medical record all efforts made to contact any agent, surrogate, or a family member or other person the hospital reasonably believes has the authority to make health care decisions on behalf of the patient.

(c) Application of this section shall be suspended during any period in which the hospital implements its disaster and mass casualty program, or its fire and internal disaster program.

SEC. 3. Section 4800 of the Probate Code is amended to read:

4800. (a) The Secretary of State shall establish a registry system through which a person who has executed a written advance health care directive may register in a central information center, information regarding the advance directive, making that information available upon request to any health care provider, the public guardian, or the legal representative of the registrant. A request for information pursuant to this section shall state the need for the information.

(b) The Secretary of State shall respond by the close of business on the next business day to a request for information made pursuant to Section 4717 by the emergency department of a general acute care hospital.

(c) Information that may be received is limited to the registrant's name, social security number, driver's license number, or other individual identifying number established by law, if any, address, date and place of birth, the registrant's advance health care directive, an intended place of deposit or safekeeping of a written advance health care directive, and the name and telephone number of the agent and any alternative agent. Information that may be released upon request may not include the registrant's social security number except when necessary to verify the identity of the registrant.

(d) When the Secretary of State receives information from a registrant, the secretary shall issue the registrant an Advance Health Care Directive Registry identification card indicating that an advance health care directive, or information regarding an advance health care directive, has been deposited with the registry. Costs associated with issuance of the card shall be offset by the fee charged by the Secretary of State to receive and register information at the registry.

(e) The Secretary of State, at the request of the registrant or his or her legal representative, shall transmit the information received regarding the written advance health care directive to the registry system of another jurisdiction as identified by the registrant, or his or her legal representative.

(f) The Secretary of State shall charge a fee to each registrant in an amount such that, when all fees charged to registrants are aggregated, the aggregated fees do not exceed the actual cost of establishing and maintaining the registry.

SEC. 4. Section 4805 of the Probate Code is amended to read:

4805. Nothing in this part shall be construed to affect the duty of a health care provider to provide information to a patient regarding advance health care directives pursuant to any provision of federal law.

SEC. 5. Section 1.5 of this bill incorporates amendments to Section 6254 of the Government Code proposed by both this bill and AB 1933. 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 6254 of the Government Code, and (3) this bill is enacted after AB 1933, in which case Section 1 of this bill shall not become operative.

CHAPTER 883

An act to add Section 1936.1 to the Civil Code, relating to rental vehicles.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 2004.]

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

SECTION 1. Section 1936.1 is added to the Civil Code, to read:

1936.1. (a) (1) A rental company shall provide a renter of a 15-passenger van with a copy of the United States Department of Transportation, National Highway Traffic Safety Administration's consumer advisory for 15-passenger vans titled ''Reducing the Risk of Rollover Crashes'' or, if that advisory is updated, a copy of the updated advisory. The renter shall acknowledge receipt of that copy by signing an acknowledgment of receipt on the rental agreement or on an attached form.

(2) If the rental of that 15-passenger van is for a business purpose or use, the rental company shall also provide on the document described in paragraph (1) that only an employee with the proper licensing may drive that vehicle. The renter shall acknowledge the receipt thereof in the same manner as described in paragraph (1).

(b) (1) Except as provided in paragraph (2), for purposes of this section, a ''15-passenger van'' means any van manufactured to accommodate 15 passengers, including the driver, regardless of whether that van has been altered to accommodate fewer than 15 passengers.

(2) For purposes of this section, a ''15-passenger van'' does not mean a 15-passenger van with dual rear wheels that has a gross weight rating equal to, or greater than, 11,500 pounds.

CHAPTER 884

An act to amend Section 521 of, to amend and renumber Sections 110 and 111 of, to add Sections 527, 528, 529, and 529.5 to, and to add the heading of Article 3.5 (commencing with Section 525) to Chapter 8 of Division 1 of, the Water Code, relating to water.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 2004.]

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

SECTION 1. Section 110 of the Water Code is amended and renumbered to read:

525. (a) Notwithstanding any other provision of law, every water purveyor who sells, leases, rents, furnishes, or delivers water service to any person shall require, as a condition of new water service on and after January 1, 1992, that a suitable water meter to measure the water service shall be installed on the water service facilities in accordance with this chapter. The cost of installation of the meter shall be paid by the user of the water, and any water purveyor may impose and collect charges for those costs.

(b) Subdivision (a) applies only to potable water.

(c) Subdivision (a) does not apply to a community water system which serves less than 15 service connections used by yearlong residents or regularly serves less than 25 yearlong residents, or a single well which services the water supply of a single-family residential home.

SEC. 2. Section 111 of the Water Code is amended and renumbered to read:

526. (a) Notwithstanding any other provision of law, an urban water supplier that, on or after January 1, 2004, receives water from the federal Central Valley Project under a water service contract or subcontract executed pursuant to Section 485h(c) of Title 43 of the United States Code with the Bureau of Reclamation of the United States Department of the Interior shall do both of the following:

(1) On or before January 1, 2013, install water meters on all service connections to residential and nonagricultural commercial buildings constructed prior to January 1, 1992, located within its service area.

(2) On and after March 1, 2013, or according to the terms of the Central Valley Project water contract in operation, charge customers for water based on the actual volume of deliveries, as measured by a water meter.

(b) An urban water supplier that receives water from the federal Central Valley Project under a water service contract or subcontract described in subdivision (a) may recover the cost of providing services related to the purchase, installation, and operation and maintenance of water meters from rates, fees, or charges.

SEC. 3. Section 521 of the Water Code is amended to read:

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

(a) Water furnished or used without any method of determination of the quantities of water used by the person to whom the water is furnished has caused, and will continue to cause, waste and unreasonable use of water, and that this waste and unreasonable use should be identified, isolated, and eliminated.

(b) Water metering and volumetric pricing are among the most efficient conservation tools, providing information on how much water is being used and pricing to encourage conservation.

(c) Without water meters, it is impossible for homeowners and businesses to know how much water they are using, thereby inhibiting conservation, punishing those who conserve, and rewarding those who waste water.

(d) Existing law requires the installation of a water meter as a condition of water service provided pursuant to a connection installed on or after January 1, 1992, but the continuing widespread absence of water meters and the lack of volumetric pricing could result in the inefficient use of water for municipal and industrial uses.

(e) The benefits to be gained from metering infrastructure are not recovered if urban water suppliers do not use this infrastructure.

(f) This chapter addresses a subject matter of statewide concern. It is the intent of the Legislature that this chapter supersede and preempt all enactments and other local action of cities and counties, including charter cities and charter counties, and other local public agencies that conflict with this chapter, other than enactments or local action that impose additional or more stringent requirements regarding matters set forth in this chapter.

(g) An urban water supplier should take any available necessary step consistent with state law to ensure that the implementation of this chapter does not place an unreasonable burden on low-income families.

SEC. 4. The heading of Article 3.5 (commencing with Section 525) is added to Chapter 8 of Division 1 of the Water Code, to read:

Article 3.5. Metered Service

SEC. 5. Section 527 is added to the Water Code, to read:

527. (a) An urban water supplier that is not subject to Section 526 shall do both the following:

(1) Install water meters on all municipal and industrial service connections located within its service area on or before January 1, 2025.

(2) (A) Charge each customer that has a service connection for which a water meter has been installed, based on the actual volume of deliveries, as measured by the water meter, beginning on or before January 1, 2010.

(B) Notwithstanding subparagraph (A), in order to provide customers with experience in volume-based water service charges, an urban water supplier that is subject to this subdivision may delay, for one annual seasonal cycle of water use, the use of meter-based charges for service connections that are being converted from nonvolume-based billing to volume-based billing.

(b) A water purveyor, including an urban water supplier, may recover the cost of providing services related to the purchase, installation, and operation of a water meter from rates, fees, or charges.

SEC. 6. Section 528 is added to the Water Code, to read:

528. Notwithstanding Sections 526 and 527, any water purveyor that becomes an urban water supplier on or after January 1, 2005, shall do both the following:

(a) Install water meters on all municipal and industrial service connections located within its service area within 10 years of meeting the definition of urban water supplier.

(b) (1) Charge each customer for which a water meter has been installed, based on the actual volume of water delivered, as measured by the water meter, within five years of meeting the definition of urban water supplier.

(2) Notwithstanding paragraph (1), in order to provide customers with experience in volume-based water service charges, an urban water supplier that is subject to this subdivision may delay, for one annual seasonal cycle of water use, the use of meter-based charges for service connections that are being converted from nonvolume-based billing to volume-based billing.

(c) For the purposes of this article, an ''urban water supplier'' has the same meaning as that set forth in Section 10617.

SEC. 7. Section 529 is added to the Water Code, to read:

529. (a) This article addresses a subject matter of statewide concern.

(b) Subject to subdivision (c), this article supersedes and preempts all enactments, including charter provisions and amendments thereto, and

other local action of cities and counties, including charter cities and charter counties, and other local public agencies that conflict with this article.

(c) This article does not supersede or preempt any enactment or other local action that imposes additional or more stringent requirements regarding matters set forth in this article.

SEC. 8. Section 529.5 is added to the Water Code, to read:

529.5. On and after January 1, 2010, any urban water supplier that applies for financial assistance from the state for a wastewater treatment project, a water use efficiency project, or a drinking water treatment project, or for a permit for a new or expanded water supply, shall demonstrate that the applicant meets the requirements of this article.

CHAPTER 885

An act to add Section 40608 to the Health and Safety Code, relating to air pollution.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 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 F-35 Joint Strike Fighter, a high profile military jet capable of making carrier-landings and designed to drop bombs and to attack other aircraft, is scheduled to be ready for delivery to United States military customers as early as 2008.

(2) The United States Navy is considering a number of sites to be the West Coast Operations Center to house the F-35 Joint Strike Fighter, one of which is the Lemoore Naval Air Station located in Kings County.

(3) It is estimated that as many as 10,000 new jobs will be generated in and around the site selected to be the West Coast Operations Center that will house the F-35 Joint Strike Fighter. It is also estimated that there will be an increase in economic activity of $1 billion in the area surrounding the site that is selected to be the West Coast Operations Center chosen to house the F-35 Joint Strike Fighter.

(4) The Lemoore Naval Air Station, as the Navy's newest air station that serves as the West Coast home of the Super Hornet aircraft, would be an excellent site to house the F-35 Joint Strike Fighter.

(5) The Lemoore Naval Air Station facilities that would house the F-35 Joint Strike Fighter are in the proximity of training grounds, are

surrounded by a three-mile ring of farmland, and are separated by a number of miles from the base's administration and housing areas.

(6) If the Lemoore Naval Air Station is selected as the West Coast Operations Center to house the F-35 Joint Strike Fighter, there could be a negative impact on the ambient air quality within the San Joaquin Valley Unified Air Pollution Control District.

(7) It is therefore necessary that any increased emissions of air contaminant associated with the operation of the F-35 Joint Strike Fighter within the San Joaquin Valley Unified Air Pollution Control District be offset or mitigated by reductions in emissions from other sources of emissions in the district.

(b) (1) It is the intent of the Legislature to encourage the United States Navy to select the Lemoore Naval Air Station as the West Coast Operations Center to house the F-35 Joint Strike Fighter.

(2) It is the further intent of the Legislature to calculate increases in state revenues derived from, and associated with, the selection of the Lemoore Naval Air Station as the West Coast Operations Center to house the F-35 Joint Strike Fighter, and to determine, after that calculation has been made, whether state funding should be provided in an amount based on that calculation to the San Joaquin Valley Unified Air Pollution Control District, for use in mitigating any increase in emissions of air contaminants that may result if the Lemoore Naval Air Station is chosen to be the West Coast Operations Center to house the F-35 Joint Strike Fighter.

SEC. 2. Section 40608 is added to the Health and Safety Code, to read:

40608. (a) The district may develop and adopt by regulation, not later than January 1, 2008, a program to offset or mitigate the increased emissions of air contaminants resulting from the operation of the F-35 Joint Strike Fighter program within the district. If the district implements a program under this subdivision, the district shall provide grants to projects that the district determines will provide measurable reductions in emissions of air contaminants in the district, and may include projects that reduce emissions from stationary or mobile sources within the district. Any emission reductions achieved pursuant to this program shall be surplus, quantifiable, permanent, and enforceable and shall not otherwise be required by law or regulation.

(b) For purposes of this section:

(1) ''Joint Strike Fighter Impact Zone'' means Kings County.

(2) ''Base fiscal year'' means the 2003–04 fiscal year.

(3) ''State tax revenues'' includes revenues derived from the imposition of taxes under the Sales and Use Tax Law (Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code), the Personal Income Tax Law (Part 10 (commencing

with Section 17001) of Division 2 of the Revenue and Taxation Code), and the Corporation Tax Law (Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code).

(c) (1) The California Research Bureau, in consultation with the State Board of Equalization and the Franchise Tax Board, shall, no later than December 31, 2004, calculate the state tax revenues derived from, or attributable to, the Joint Strike Fighter Impact Zone during the base fiscal year.

(2) The California Research Bureau, in consultation with the State Board of Equalization and the Franchise Tax Board, shall, no later than December 31, 2007, and no later than December 31 of each following year, calculate the state tax revenues derived from, or attributable to, the Joint Strike Fighter Impact Zone during the preceding fiscal year.

CHAPTER 886

An act to amend Section 368 of the Penal Code, and to amend Sections 15656 and 15657 of, and to add Section 15657.5 to, the Welfare and Institutions Code, relating to elder and dependent adult abuse.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 2004.]

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

SECTION 1. Section 368 of the Penal Code is amended to read:

368. (a) The Legislature finds and declares that crimes against elders and dependent adults are deserving of special consideration and protection, not unlike the special protections provided for minor children, because elders and dependent adults may be confused, on various medications, mentally or physically impaired, or incompetent, and therefore less able to protect themselves, to understand or report criminal conduct, or to testify in court proceedings on their own behalf.

(b) (1) Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health is endangered, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not

to exceed six thousand dollars ($6,000), or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or four years.

(2) If in the commission of an offense described in paragraph (1), the victim suffers great bodily injury, as defined in Section 12022.7, the defendant shall receive an additional term in the state prison as follows:

(A) Three years if the victim is under 70 years of age.

(B) Five years if the victim is 70 years of age or older.

(3) If in the commission of an offense described in paragraph (1), the defendant proximately causes the death of the victim, the defendant shall receive an additional term in the state prison as follows:

(A) Five years if the victim is under 70 years of age.

(B) Seven years if the victim is 70 years of age or older.

(c) Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health may be endangered, is guilty of a misdemeanor. A second or subsequent violation of this subdivision is subject to a fine not to exceed two thousand dollars ($2,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

(d) Any person who is not a caretaker who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, or who violates Section 530.5 proscribing identity theft, with respect to the property or personal identifying information of an elder or a dependent adult, and who knows or reasonably should know that another person is an elder or dependent adult, is subject to imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years, when the money, labor, goods, services, or real or personal property taken or obtained is of a value exceeding four hundred dollars ($400); and by a fine not exceeding one thousand dollars ($1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the money, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding four hundred dollars ($400).

(e) Any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, or who violates Section 530.5 proscribing identity theft, with respect to the property or personal identifying information of that elder or dependent

adult, is subject to imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years when the money, labor, goods, services, or real or personal property taken or obtained is of a value exceeding four hundred dollars ($400), and by a fine not exceeding one thousand dollars ($1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the money, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding four hundred dollars ($400).

(f) Any person who commits the false imprisonment of an elder or a dependent adult by the use of violence, menace, fraud, or deceit is subject to imprisonment in the state prison for two, three, or four years.

(g) As used in this section, ''elder'' means any person who is 65 years of age or older.

(h) As used in this section, ''dependent adult'' means any person who is between the ages of 18 and 64, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. ''Dependent adult'' includes any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(i) As used in this section, ''caretaker'' means any person who has the care, custody, or control of, or who stands in a position of trust with, an elder or a dependent adult.

(j) Nothing in this section shall preclude prosecution under both this section and Section 187 or 12022.7 or any other provision of law. However, a person shall not receive an additional term of imprisonment under both paragraphs (2) and (3) of subdivision (b) for any single offense, nor shall a person receive an additional term of imprisonment under both Section 12022.7 and paragraph (2) or (3) of subdivision (b) for any single offense.

(k) In any case in which a person is convicted of violating these provisions, the court may require him or her to receive appropriate counseling as a condition of probation. Any defendant ordered to be placed in a counseling program shall be responsible for paying the expense of his or her participation in the counseling program as determined by the court. The court shall take into consideration the ability of the defendant to pay, and no defendant shall be denied probation because of his or her inability to pay.

SEC. 1.5. Section 368 of the Penal Code is amended to read:

368. (a) The Legislature finds and declares that crimes against elders and dependent adults are deserving of special consideration and protection, not unlike the special protections provided for minor

children, because elders and dependent adults may be confused, on various medications, mentally or physically impaired, or incompetent, and therefore less able to protect themselves, to understand or report criminal conduct, or to testify in court proceedings on their own behalf.

(b) (1) Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health is endangered, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not to exceed six thousand dollars ($6,000), or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or four years.

(2) If in the commission of an offense described in paragraph (1), the victim suffers great bodily injury, as defined in Section 12022.7, the defendant shall receive an additional term in the state prison as follows:

(A) Three years if the victim is under 70 years of age.

(B) Five years if the victim is 70 years of age or older.

(3) If in the commission of an offense described in paragraph (1), the defendant proximately causes the death of the victim, the defendant shall receive an additional term in the state prison as follows:

(A) Five years if the victim is under 70 years of age.

(B) Seven years if the victim is 70 years of age or older.

(c) Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health may be endangered, is guilty of a misdemeanor. A second or subsequent violation of this subdivision is punishable by a fine not to exceed two thousand dollars ($2,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

(d) Any person who is not a caretaker who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, or who violates Section 530.5 proscribing identity theft, with respect to the property or personal identifying information of an elder or a dependent adult, and

who knows or reasonably should know that the victim is an elder or a dependent adult, is subject to imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years, when the money, labor, goods, services, or real or personal property taken or obtained is of a value exceeding eight hundred dollars ($800); and by a fine not exceeding one thousand dollars ($1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the money, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding eight hundred dollars ($800).

(e) Any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, or who violates Section 530.5 proscribing identity theft, with respect to the property or personal identifying information of that elder or dependent adult, is subject to imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years when the money, labor, goods, services, or real or personal property taken or obtained is of a value exceeding eight hundred dollars ($800), and by a fine not exceeding one thousand dollars ($1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the money, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding eight hundred dollars ($800).

(f) Any person who commits the false imprisonment of an elder or a dependent adult by the use of violence, menace, fraud, or deceit is subject to imprisonment in the state prison for two, three, or four years.

(g) As used in this section, ''elder'' means any person who is 65 years of age or older.

(h) As used in this section, ''dependent adult'' means any person who is between the ages of 18 and 64, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. ''Dependent adult'' includes any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(i) As used in this section, ''caretaker'' means any person who has the care, custody, or control of, or who stands in a position of trust with, an elder or a dependent adult.

(j) Nothing in this section shall preclude prosecution under both this section and Section 187 or 12022.7 or any other provision of law. However, a person shall not receive an additional term of imprisonment under both paragraphs (2) and (3) of subdivision (b) for any single offense, nor shall a person receive an additional term of imprisonment

under both Section 12022.7 and paragraph (2) or (3) of subdivision (b) for any single offense.

SEC. 2. Section 15656 of the Welfare and Institutions Code is amended to read:

15656. (a) Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts unjustifiable physical pain or mental suffering upon him or her, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation such that his or her person or health is endangered, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison for two, three, or four years.

(b) Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts unjustifiable physical pain or mental suffering on him or her, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation such that his or her person or health may be endangered, is guilty of a misdemeanor.

(c) Any caretaker of an elder or a dependent adult who violates any provision of law prescribing theft or embezzlement, with respect to the property of that elder or dependent adult, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison for two, three, or four years when the money, labor, or real or personal property taken is of a value exceeding four hundred dollars ($400), and by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding one year, or by both that imprisonment and fine, when the money, labor, or real or personal property taken is of a value not exceeding four hundred dollars ($400).

(d) As used in this section, ''caretaker'' means any person who has the care, custody, or control of or who stands in a position of trust with, an elder or a dependent adult.

(e) Conduct covered in subdivision (b) of Section 15610.57 shall not be subject to this section.

SEC. 2.5. Section 15656 of the Welfare and Institutions Code is amended to read:

15656. (a) Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or

conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts unjustifiable physical pain or mental suffering upon him or her, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation such that his or her person or health is endangered, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison for two, three, or four years.

(b) Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts unjustifiable physical pain or mental suffering on him or her, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation such that his or her person or health may be endangered, is guilty of a misdemeanor.

(c) Any caretaker of an elder or a dependent adult who violates any provision of law prescribing theft or embezzlement, with respect to the property of that elder or dependent adult, is subject to imprisonment in the county jail not exceeding one year, or in the state prison for two, three, or four years when the money, labor, or real or personal property taken is of a value exceeding eight hundred dollars ($800), and by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding one year, or by both that imprisonment and fine, when the money, labor, or real or personal property taken is of a value not exceeding eight hundred dollars ($800).

(d) As used in this section, ''caretaker'' means any person who has the care, custody, or control of or who stands in a position of trust with, an elder or a dependent adult.

(e) Conduct covered in subdivision (b) of Section 15610.57 shall not be subject to this section.

SEC. 3. Section 15657 of the Welfare and Institutions Code is amended to read:

15657. Where it is proven by clear and convincing evidence that a defendant is liable for physical abuse as defined in Section 15610.63, or neglect as defined in Section 15610.57, and that the defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of this abuse, the following shall apply, in addition to all other remedies otherwise provided by law:

(a) The court shall award to the plaintiff reasonable attorney's fees and costs. The term ''costs'' includes, but is not limited to, reasonable

fees for the services of a conservator, if any, devoted to the litigation of a claim brought under this article.

(b) The limitations imposed by Section 377.34 of the Code of Civil Procedure on the damages recoverable shall not apply. However, the damages recovered shall not exceed the damages permitted to be recovered pursuant to subdivision (b) of Section 3333.2 of the Civil Code.

(c) The standards set forth in subdivision (b) of Section 3294 of the Civil Code regarding the imposition of punitive damages on an employer based upon the acts of an employee shall be satisfied before any damages or attorney's fees permitted under this section may be imposed against an employer.

SEC. 4. Section 15657.5 is added to the Welfare and Institutions Code, to read:

15657.5. (a) Where it is proven by a preponderance of the evidence that a defendant is liable for financial abuse, as defined in Section 15610.30, in addition to all other remedies otherwise provided by law, the court shall award to the plaintiff reasonable attorney's fees and costs. The term ''costs'' includes, but is not limited to, reasonable fees for the services of a conservator, if any, devoted to the litigation of a claim brought under this article.

(b) Where it is proven by a preponderance of the evidence that a defendant is liable for financial abuse, as defined in Section 15610.30, and where it is proven by clear and convincing evidence that the defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of the abuse, in addition to reasonable attorney's fees and costs set forth in subdivision (a), and all other remedies otherwise provided by law, the following shall apply:

(1) The limitations imposed by Section 377.34 of the Code of Civil Procedure on the damages recoverable shall not apply.

(2) The standards set forth in subdivision (b) of Section 3294 of the Civil Code regarding the imposition of punitive damages on an employer based upon the acts of an employee shall be satisfied before any damages or attorney's fees permitted under this section may be imposed against an employer.

(c) Nothing in this section affects the award of punitive damages under Section 3294 of the Civil Code.

SEC. 5. Sections 1.5 and 2.5 of this act shall only become operative if Assembly Bill 2705 is enacted and becomes effective on or before January 1, 2005, in which case Sections 1 and 2 of this act shall not become operative.

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

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

CHAPTER 887

An act to amend, repeal, and add Section 4043 of, to add and repeal Section 4162.5 of, and to repeal and add Section 4161 of, the Business and Professions Code, relating to pharmacy, and making an appropriation therefor.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 2004.]

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

SECTION 1. Section 4043 of the Business and Professions Code is amended to read:

4043. (a) ''Wholesaler'' means and includes every person who acts as a wholesale merchant, broker, jobber, customs broker, reverse distributor, agent, or out-of-state distributor, who sells for resale, or negotiates for distribution, or takes possession of, any drug or device included in Section 4022. Unless otherwise authorized by law, a wholesaler may not store, warehouse, or authorize the storage or warehousing of drugs with any person or at any location not licensed by the board.

(b) 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 4043 is added to the Business and Professions Code, to read:

4043. (a) ''Wholesaler'' means and includes a person who acts as a wholesale merchant, broker, jobber, customs broker, reverse distributor, agent, or a nonresident wholesaler, who sells for resale, or negotiates for distribution, or takes possession of, any drug or device included in Section 4022. Unless otherwise authorized by law, a wholesaler may not store, warehouse, or authorize the storage or warehousing of drugs with any person or at any location not licensed by the board.

(b) This section shall become operative January 1, 2006.

SEC. 3. Section 4161 of the Business and Professions Code is repealed.

SEC. 4. Section 4161 is added to the Business and Professions Code, to read:

4161. (a) A person located outside this state that ships, mails, or delivers dangerous drugs or dangerous devices into this state at wholesale shall be considered an out-of-state distributor.

(b) An out-of-state distributor shall be licensed by the board prior to shipping, mailing, or delivering dangerous drugs or dangerous devices to a site located in this state.

(c) A separate license shall be required for each place of business owned or operated by an out-of-state distributor from or through which dangerous drugs or dangerous devices are shipped, mailed, or delivered to a site located in this state. A license shall be renewed annually and shall not be transferable.

(d) The following information shall be reported, in writing, to the board at the time of initial application for licensure by a nonresident wholesaler, on renewal of an out-of-state distributor license, or within 30 days of a change in the following information:

(1) Its agent for service of process in this state.

(2) Its principal corporate officers, as specified by the board, if any.

(3) Its general partners, as specified by the board, if any.

(4) Its owners, if the applicant is not a corporation or partnership.

(e) A report containing the information in subdivision (d) shall be made within 30 days of any change of ownership, office, corporate officer, or partner.

(f) An out-of-state distributor shall comply with all directions and requests for information from the regulatory or licensing agency of the state in which it is licensed, as well as with all requests for information made by the board.

(g) An out-of-state distributor wholesaler shall maintain records of dangerous drugs and dangerous devices sold, traded, or transferred to persons in this state, so that the records are in a readily retrievable form.

(h) An out-of-state distributor shall at all times maintain a valid, unexpired license, permit, or registration to conduct the business of the wholesaler in compliance with the laws of the state in which it is a resident. An application for an out-of-state distributor license in this state shall include a license verification from the licensing authority in the applicant's state of residence.

(i) The board may not issue or renew an out-of-state distributor license until the out-of-state distributor identifies an exemptee-in-charge and notifies the board in writing of the identity and license number of the exemptee-in-charge.

(j) The exemptee-in-charge shall be responsible for the nonresident wholesaler's compliance with state and federal laws governing wholesalers. A nonresident wholesaler shall identify and notify the board of a new exemptee-in-charge within 30 days of the date that the prior exemptee-in-charge ceases to be the exemptee-in-charge.

(k) The board may issue a temporary license, upon conditions and for periods of time as the board determines to be in the public interest. A temporary license fee shall be fixed by the board at an amount not to exceed the annual fee for renewal of a license to conduct business as an out-of-state distributor.

(*l*) The license fee shall be the fee specified in subdivision (f) of Section 4400.

(m) A pharmacy that meets the requirements of Section 4001.2, as added by Senate Bill 1149 of the 2003–04 Regular Session, including any subsequent amendment thereto, shall not be considered an out-of-state distributor for purposes of this section.

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

SEC. 4.5. Section 4161 is added to the Business and Professions Code, to read:

4161. (a) A person located outside this state that ships, mails, or delivers dangerous drugs or dangerous devices into this state shall be considered a nonresident wholesaler.

(b) A nonresident wholesaler shall be licensed by the board prior to shipping, mailing, or delivering dangerous drugs or dangerous devices to a site located in this state.

(c) A separate license shall be required for each place of business owned or operated by a nonresident wholesaler from or through which dangerous drugs or dangerous devices are shipped, mailed, or delivered to a site located in this state. A license shall be renewed annually and shall not be transferable.

(d) The following information shall be reported, in writing, to the board at the time of initial application for licensure by a nonresident wholesaler, on renewal of a nonresident wholesaler license, or within 30 days of a change in that information:

(1) Its agent for service of process in this state.

(2) Its principal corporate officers, as specified by the board, if any.

(3) Its general partners, as specified by the board, if any.

(4) Its owners if the applicant is not a corporation or partnership.

(e) A report containing the information in subdivision (d) shall be made within 30 days of any change of ownership, office, corporate officer, or partner.

(f) A nonresident wholesaler shall comply with all directions and requests for information from the regulatory or licensing agency of the state in which it is licensed, as well as with all requests for information made by the board.

(g) A nonresident wholesaler shall maintain records of dangerous drugs and dangerous devices sold, traded, or transferred to persons in this state, so that the records are in a readily retrievable form.

(h) A nonresident wholesaler shall at all times maintain a valid, unexpired license, permit, or registration to conduct the business of the wholesaler in compliance with the laws of the state in which it is a resident. An application for a nonresident wholesaler license in this state shall include a license verification from the licensing authority in the applicant's state of residence.

(i) The board may not issue or renew a nonresident wholesaler license until the nonresident wholesaler identifies a designated representative-in-charge and notifies the board in writing of the identity and license number of the designated representative-in-charge.

(j) The designated representative-in-charge shall be responsible for the nonresident wholesaler's compliance with state and federal laws governing wholesalers. A nonresident wholesaler shall identify and notify the board of a new designated representative-in-charge within 30 days of the date that the prior designated representative-in-charge ceases to be the designated representative-in-charge.

(k) The board may issue a temporary license, upon conditions and for periods of time as the board determines to be in the public interest. A temporary license fee shall be fixed by the board at an amount not to exceed the annual fee for renewal of a license to conduct business as a nonresident wholesaler.

(*l*) The registration fee shall be the fee specified in subdivision (f) of Section 4400.

(m) A pharmacy that meets the requirements of Section 4001.2, as added by Senate Bill 1149 of the 2003–04 Regular Session, including any subsequent amendment thereto, shall not be considered a nonresident wholesaler for purposes of this section.

(n) This section shall become operative January 1, 2006.

SEC. 5. Section 4162.5 is added to the Business and Professions Code, to read:

4162.5. (a) (1) An applicant for the issuance or renewal of a nonresident wholesaler license shall submit a surety bond of one hundred thousand dollars ($100,000) for each site to be licensed, or other equivalent means of security acceptable to the board, such as an irrevocable letter of credit, or a deposit in a trust account or financial institution, payable to the Pharmacy Board Contingent Fund. The purpose of the surety bond is to secure payment of any administrative

fine imposed by the board and any cost recovery ordered pursuant to Section 125.3.

(2) For purpose of paragraph (1), the board may accept a surety bond less than one hundred thousand dollars ($100,000) if the annual gross receipts of the previous tax year for the nonresident wholesaler is ten million dollars ($10,000,000) or less in which the surety bond shall be twenty-five thousand dollars ($25,000).

(3) For applicants who satisfy paragraph (2), the board may require a bond up to one hundred thousand dollars ($100,000) for any nonresident wholesaler who has been disciplined by any state or federal agency or has been issued an administrative fine pursuant to this chapter.

(b) The board may make a claim against the bond if the licensee fails to pay a fine within 30 days of the issuance of the fine or when the costs become final.

(c) A single surety bond or other equivalent means of security acceptable to the board shall satisfy the requirement of subdivision (a) for all licensed sites under common control as defined in Section 4126.5.

(d) This section shall become operative on January 1, 2006, and shall become inoperative and is repealed on, January 1, 2011, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends those dates.

SEC. 6. This act shall become operative only if Senate Bill 1307 is also enacted and becomes effective on or before January 1, 2005.

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

CHAPTER 888

An act to amend Sections 58, 7601, 7602, 7603, 7620, 7622, 7660, 7661, and 7666 of the Probate Code, and Section 4986.6 of the Revenue and Taxation Code, relating to public administrators.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 2004.]

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

SECTION 1. Section 58 of the Probate Code is amended to read:

58. (a) ''Personal representative'' means executor, administrator, administrator with the will annexed, special administrator, successor personal representative, public administrator acting pursuant to Section 7660, or a person who performs substantially the same function under the law of another jurisdiction governing the person's status.

(b) ''General personal representative'' excludes a special administrator unless the special administrator has the powers, duties, and obligations of a general personal representative under Section 8545.

SEC. 2. Section 7601 of the Probate Code is amended to read:

7601. (a) If no personal representative has been appointed, the public administrator of a county shall take prompt possession or control of property of a decedent in the county that is deemed by the public administrator to be subject to loss, injury, waste, or misappropriation, or that the court orders into the possession or control of the public administrator after notice to the public administrator as provided in Section 1220.

(b) If property described in subdivision (a) is beyond the ability of the public administrator to take possession or control, the public administrator is not liable for failing to take possession or control of the property.

SEC. 3. Section 7602 of the Probate Code is amended to read:

7602. (a) A public administrator who is authorized to take possession or control of property of a decedent under this article shall make a prompt search for other property, a will, and instructions for disposition of the decedent's remains.

(b) If a will is found, the public administrator or custodian of the will shall deliver the will as provided in Section 8200.

(c) If instructions for disposition of the decedent's remains are found, the public administrator shall promptly deliver the instructions to the person upon whom the right to control disposition of the decedent's remains devolves as provided in Section 7100 of the Health and Safety Code.

(d) If other property is located, the public administrator shall take possession or control of any property that, in the sole discretion of the public administrator, is deemed to be subject to loss, injury, waste, or misappropriation and that is located anywhere in this state or that is subject to the laws of this state. The public administrator does not have any liability for loss, injury, waste, or misappropriation of property of which he or she is unable to take possession or control.

SEC. 4. Section 7603 of the Probate Code is amended to read:

7603. (a) A public administrator who is authorized to take possession or control of property of a decedent pursuant to this article may issue a written certification of that fact. The written certification is effective for 30 days after the date of issuance.

(b) The public administrator may record a copy of the written certification in any county in which is located real property of which the public administrator is authorized to take possession or control under this article.

(c) A financial institution, government or private agency, retirement fund administrator, insurance company, licensed securities dealer, or other person shall, without the necessity of inquiring into the truth of the written certification, without requiring a death certificate, without charge, and without court order or letters being issued:

(1) Provide the public administrator complete information concerning property held in the sole name of the decedent, including the names and addresses of any beneficiaries.

(2) Grant the public administrator access to a safe-deposit box rented in the sole name of the decedent for the purpose of inspection and removal of any will or instructions for disposition of the decedent's remains. Costs and expenses incurred in drilling or forcing a safe-deposit box shall be borne by the estate of the decedent.

(3) Surrender to the public administrator any property of the decedent that, in the sole discretion of the public administrator, is deemed to be subject to loss, injury, waste, or misappropriation.

(d) Receipt of the written certification provided by this section:

(1) Constitutes sufficient acquittance for providing information or granting access to the safe-deposit box, for removal of the decedent's will and instructions for disposition of the decedent's remains, and for surrendering property of the decedent.

(2) Fully discharges the financial institution, government or private agency, retirement fund administrator, insurance company, licensed securities dealer, or other person from any liability for any act or omission of the public administrator with respect to the property or the safe-deposit box.

SEC. 5. Section 7620 of the Probate Code is amended to read:

7620. The public administrator of the county in which the estate of a decedent may be administered shall promptly:

(a) Petition for appointment as personal representative of the estate if no person having higher priority has petitioned for appointment and the total value of the property in the decedent's estate exceeds one hundred thousand dollars ($100,000).

(b) Petition for appointment as personal representative of any other estate the public administrator determines is proper.

(c) Accept appointment as personal representative of an estate when so ordered by the court, whether or not on petition of the public administrator, after notice to the public administrator as provided in Section 7621.

(d) Proceed with summary disposition of the estate as authorized by Article 4 (commencing with Section 7660), if the total value of the property in the decedent's estate does not exceed the amount prescribed in Section 13100 and a person having higher priority has not assumed responsibility for administration of the estate.

SEC. 6. Section 7622 of the Probate Code is amended to read:

7622. Except as otherwise provided in this chapter:

(a) The public administrator shall administer the estate in the same manner as a personal representative generally, and the provisions of this code concerning the administration of the decedent's estate apply to administration by the public administrator.

(b) The public administrator is entitled to receive the same compensation as is granted by this division to a personal representative generally. The attorney for the public administrator is entitled to receive the same compensation as is granted by this division to an attorney for a personal representative generally. However, the compensation of the public administrator and the public administrator's attorney may not be less than the compensation in effect at the time of appointment of the public administrator or the minimum amount provided in subdivision (b) of Section 7666, whichever is greater.

SEC. 7. Section 7660 of the Probate Code is amended to read:

7660. (a) If a public administrator takes possession or control of an estate pursuant to this chapter, the public administrator may, acting as personal representative of the estate, summarily dispose of the estate in the manner provided in this article in either of the following circumstances:

(1) The total value of the property in the decedent's estate does not exceed the amount prescribed in Section 13100. The authority provided by this paragraph may be exercised only upon order of the court. The order may be made upon ex parte application. The fee to be allowed to the clerk for the filing of the application shall be set by the court. The authority for this summary administration of the estate shall be evidenced by a court order for summary disposition.

(2) The total value of the property in the decedent's estate does not exceed thirty thousand dollars ($30,000). The authority provided by this paragraph may be exercised without court authorization.

(A) A public administrator who is authorized to summarily dispose of property of a decedent pursuant to this paragraph may issue a written certification of Authority for Summary Administration. The written certification is effective for 30 days after the date of issuance.

(B) A financial institution, government or private agency, retirement fund administrator, insurance company, licensed securities dealer, or other person shall, without the necessity of inquiring into the truth of the written certification of Authority for Summary Administration and without court order or letters being issued do all of the following:

(i) Provide the public administrator complete information concerning any property held in the name of the decedent, including the names and addresses of any beneficiaries or joint owners.

(ii) Grant the public administrator access to a safe-deposit box or storage facility rented in the name of the decedent for the purpose of inspection and removal of property of the decedent. Costs and expenses incurred in accessing a safe-deposit box or storage facility shall be borne by the estate of the decedent.

(iii) Surrender to the public administrator any property of the decedent that is held or controlled by the financial institution, agency, retirement fund administrator, insurance company, licensed securities dealer, or other person.

(C) Receipt by a financial institution, government or private agency, retirement fund administrator, insurance company, licensed securities dealer, or other person of the written certification provided by this article shall do both of the following:

(i) Constitute sufficient acquittance for providing information or granting access to a safe-deposit box or a storage facility and for surrendering any property of the decedent.

(ii) Fully discharge the financial institution, government or private agency, retirement fund administrator, insurance company, licensed securities dealer, or other person from liability for any act or omission of the public administrator with respect to the property, a safe-deposit box, or a storage facility.

(b) Summary disposition may be made notwithstanding the existence of the decedent's will, if the will does not name an executor or if the named executor refuses to act.

(c) Nothing in this article precludes the public administrator from filing a petition with the court under any other provision of this code concerning the administration of the decedent's estate.

(d) Petitions filed pursuant to this article shall contain the information required by Section 8002.

(e) If a public administrator takes possession or control of an estate pursuant to this chapter, this article conveys the authority of a personal representative as described in Section 9650 to the public administrator to summarily dispose of the estates pursuant to the procedures described in paragraphs (1) and (2) of subdivision (a).

SEC. 8. Section 7661 of the Probate Code is amended to read:

7661. A public administrator acting under authority of this article may:

(a) Withdraw money or take possession of any other property of the decedent that is in the possession or control of a financial institution, government or private agency, retirement fund administrator, insurance company, licensed securities dealer, or other person.

(b) Collect any debts owed to the decedent, including, but not limited to, any rents, issues, or profits from the real and personal property in the estate until the estate is distributed.

(c) Sell any personal property of the decedent, including, but not limited to, stocks, bonds, mutual funds and other types of securities. Sales may be made with or without notice, as the public administrator elects. Title to the property sold passes without the need for confirmation by the court.

(d) Sell any real property of the decedent. The sale shall be accomplished through one of the following procedures:

(1) The sale may be conducted subject to Article 6 (commencing with Section 10300) of Chapter 18 of Part 5.

(2) With approval specified in the original court order for summary disposition of the estate, the sale of real property may be accomplished using a Notice of Proposed Action according to the following requirements:

(A) The publication of the sale shall be accomplished according to Sections 10300 to 10307, inclusive.

(B) The appraisal of the property and determination of the minimum sale price of 90 percent of the appraised value shall be accomplished according to Section 10309.

(C) If an offer meets the approval of the public administrator and the offered price is at least 90 percent of the appraised value, a notice of proposed action shall be made according to Sections 10581 to 10588, inclusive. If objection is not made to the notice of proposed action, the sale may be completed without a court confirmation of the sale. The sale may be consummated by recording a public administrator's deed and a copy of the court order for summary disposition that authorized the use of the notice of proposed action.

(D) If an objection to the notice of proposed action is made pursuant to Section 10587, the sale shall be confirmed in court according to Sections 10308 to 10316, inclusive. The sale may be consummated by recording an administrator's deed and a copy of the court order confirming the sale.

(E) If objection to the notice of proposed action is not made under Section 10587, the public administrator may still elect to have the sale confirmed in court according to Sections 10308 to 10316, inclusive, if

the public administrator deems that is in the best interest of the estate. Title to the property sold passes with the public administrator's deed.

SEC. 9. Section 7666 of the Probate Code is amended to read:

7666. (a) Except as provided in Section 7623 and in subdivision (b), the compensation payable to the public administrator and the attorney, if any, for the public administrator for the filing of an application pursuant to this chapter and for performance of any duty or service connected therewith is that set out in Part 7 (commencing with Section 10800).

(b) The public administrator is entitled to a minimum compensation of one thousand dollars ($1,000).

SEC. 10. Section 4986.6 of the Revenue and Taxation Code is amended to read:

4986.6. (a) When any real property escheats to the state after the lien date and is not distributed by description, either because it is unknown, or is included in a general distribution clause without description, or is property as to which no probate proceedings have been taken, all taxes levied upon the real property are valid and any tax sale for those taxes conveys the same title thereto as if no escheat had occurred, notwithstanding any provision of law to the contrary. All those taxes levied upon the real property and tax sales duly taken pursuant to law occurring before the effective date of this section are hereby validated.

(b) If real property as described in subdivision (a) is discovered prior to tax sale by delivery to the tax collector of a certified death certificate, the public administrator of the county where the decedent resided at the time of death, and in the county in which the property is situated, if different, shall be notified of the decedent's property that is subject to loss, injury, waste or misappropriation under Section 7600 of the Probate Code. The public administrator of the county where the decedent resided at the time of death shall take possession or control of the property under Section 7601 of Probate Code and conduct a probate investigation as authorized under Sections 7602 and 7603 of the Probate Code. Following the probate investigation, the public administrator shall do one of the following:

(1) If a person with a higher priority cannot be found to assume responsibility for the estate, the public administrator of the county where the decedent resided at the time of death shall immediately commence probate proceedings with respect to the property, and the tax sale may not be made. The probate proceedings may be summary proceedings, as authorized by Section 7660 of the Probate Code, or formal proceedings as authorized by Letters of Administration from the Superior Court under Section 7620 of the Probate Code. A tax sale may not be made until the probate process is completed.

(2) If a person with a higher priority cannot be found to assume responsibility for the estate, and the value of the estate will not cover the taxes, the secured liens, and the cost of probate, the public administrator of the county where the decedent resided at the time of death, as authorized by Section 7603 of Probate Code, shall notify the tax collector in writing that the public administrator has investigated the estate and has determined that the anticipated equity in the property after settlement of all secured liens and taxes does not warrant opening estate administration, at which time the tax sale may proceed.

SEC. 11. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 889

An act to amend Sections 27131, 27297.5, and 53646 of the Government Code, to amend Section 853.6 of the Penal Code, to amend Section 63.1 of the Revenue and Taxation Code, and to amend Section 21401 of the Vehicle Code, relating to local government expenses, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 2004.]

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

SECTION 1. Section 27131 of the Government Code is amended to read:

27131. (a) The board of supervisors in each county or city and county may, if the county or city and county is investing surplus funds, establish a county treasury oversight committee. The board of supervisors, in consultation with the county treasurer, shall determine the exact size of the committee, which shall consist of from 3 to 11 members, and the categories from which the members shall be represented, as specified in subdivisions (a) to (g), inclusive, of Section 27132. Members shall be nominated by the treasurer and confirmed by the board of supervisors.

(b) 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. 2. 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 that 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 the county recorder 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. 3. Section 53646 of the Government Code is amended to read:

53646. (a) (1) In the case of county government, the treasurer may annually render to the board of supervisors and any oversight committee a statement of investment policy, which the board shall review and approve at a public meeting. Any change in the policy shall also be reviewed and approved by the board at a public meeting.

(2) In the case of any other local agency, the treasurer or chief fiscal officer of the local agency may annually render to the legislative body of that local agency and any oversight committee of that local agency a statement of investment policy, which the legislative body of the local agency shall consider at a public meeting. Any change in the policy shall also be considered by the legislative body of the local agency at a public meeting.

(b) (1) The treasurer or chief fiscal officer may render a quarterly report to the chief executive officer, the internal auditor, and the

legislative body of the local agency. The quarterly report shall be so submitted within 30 days following the end of the quarter covered by the report. Except as provided in subdivisions (e) and (f), this report shall include the type of investment, issuer, date of maturity par and dollar amount invested on all securities, investments and moneys held by the local agency, and shall additionally include a description of any of the local agency's funds, investments, or programs, that are under the management of contracted parties, including lending programs. With respect to all securities held by the local agency, and under management of any outside party that is not also a local agency or the State of California Local Agency Investment Fund, the report shall also include a current market value as of the date of the report, and shall include the source of this same valuation.

(2) The quarterly report shall state compliance of the portfolio to the statement of investment policy, or manner in which the portfolio is not in compliance.

(3) The quarterly report shall include a statement denoting the ability of the local agency to meet its pool's expenditure requirements for the next six months, or provide an explanation as to why sufficient money shall, or may, not be available.

(4) In the quarterly report, a subsidiary ledger of investments may be used in accordance with accepted accounting practices.

(c) Pursuant to subdivision (b), the treasurer or chief fiscal officer shall report whatever additional information or data may be required by the legislative body of the local agency.

(d) The legislative body of a local agency may elect to require the report specified in subdivision (b) to be made on a monthly basis instead of quarterly.

(e) For local agency investments that have been placed in the Local Agency Investment Fund, created by Section 16429.1, in National Credit Union Share Insurance Fund-insured accounts in a credit union, in accounts insured or guaranteed pursuant to Section 14858 of the Financial Code, or in Federal Deposit Insurance Corporation-insured accounts in a bank or savings and loan association, in a county investment pool, or any combination of these, the treasurer or chief fiscal officer may supply to the governing body, chief executive officer, and the auditor of the local agency the most recent statement or statements received by the local agency from these institutions in lieu of the information required by paragraph (1) of subdivision (b) regarding investments in these institutions.

(f) The treasurer or chief fiscal officer shall not be required to render a quarterly report, as required by subdivision (b), to a legislative body or any oversight committee of a school district or county office of education for securities, investments, or moneys held by the school

district or county office of education in individual accounts that are less than twenty-five thousand dollars ($25,000).

(g) Except as provided in subdivisions (h) and (i), each city, county, or city and county shall submit copies of its second and fourth quarter reports to the California Debt and Investment Advisory Commission within 60 days after the close of the second and fourth quarters of each calendar year. Any city, county, or city and county not required to submit a report pursuant to subdivision (h) or (i) shall file with the commission a written statement within 60 days of the end of the second and fourth quarters of the calendar year stating the distribution and amount of its investment portfolio and that it is therefore not subject to this reporting requirement. This subdivision shall become inoperative on January 1, 2007.

(h) A city shall not be required to submit a quarterly report to the commission if, during the entire reporting period, the city has maintained 100 percent of its investment portfolio in (1) the treasury of the county in which it is located for investment by the county treasurer pursuant to Section 53684, (2) the Local Agency Investment Fund created by Section 16429.1, (3) National Credit Union Share Insurance Fund-insured accounts in a credit union, in accounts insured or guaranteed pursuant to Section 14858 of the Financial Code, or in Federal Deposit Insurance Corporation-insured accounts in a bank or savings and loan association, or (4) in any combination of these.

(i) A county or city and county shall not be required to submit a quarterly report to the commission if, during the entire reporting period, the county has maintained 100 percent of its investment portfolio in (1) the Local Agency Investment Fund created by Section 16429.1, (2) National Credit Union Share Insurance Fund-insured accounts in a credit union, in accounts insured or guaranteed pursuant to Section 14858 of the Financial Code, or in Federal Deposit Insurance Corporation-insured accounts in a bank or savings and loan association, or (3) in any combination of these.

(j) The city, county, or city and county investor of any public funds, no later than 60 days after the close of the second quarter of each calendar year and 60 days after the subsequent amendments thereto, shall provide the statement of investment policy required pursuant to this section, to the California Debt and Investment Advisory Commission.

(k) In recognition of the state and local interests served by the actions made optional in subdivisions (a) and (b), the Legislature encourages the local agency officials to continue taking the actions 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. 4. Section 853.6 of the Penal Code is amended to read:

853.6. (a) In any case in which a person is arrested for an offense declared to be a misdemeanor, including a violation of any city or county ordinance, and does not demand to be taken before a magistrate, that person shall, instead of being taken before a magistrate, be released according to the procedures set forth by this chapter. If the person is released, the officer or his or her superior shall prepare in duplicate a written notice to appear in court, containing the name and address of the person, the offense charged, and the time when, and place where, the person shall appear in court. If, pursuant to subdivision (i), the person is not released prior to being booked and the officer in charge of the booking or his or her superior determines that the person should be released, the officer or his or her superior shall prepare a written notice to appear in a court.

In any case in which a person is arrested for a misdemeanor violation of a protective court order involving domestic violence, as defined in subdivision (b) of Section 13700, or arrested pursuant to a policy, as described in Section 13701, the person shall be taken before a magistrate instead of being released according to the procedures set forth in this chapter, unless the arresting officer determines that there is not a reasonable likelihood that the offense will continue or resume or that the safety of persons or property would be imminently endangered by release of the person arrested. Prior to adopting these provisions, each city, county, or city and county shall develop a protocol to assist officers to determine when arrest and release is appropriate, rather than taking the arrested person before a magistrate. The county shall establish a committee to develop the protocol, consisting of, at a minimum, the police chief or county sheriff within the jurisdiction, the district attorney, county counsel, city attorney, representatives from domestic violence shelters, domestic violence councils, and other relevant community agencies.

Nothing in this subdivision shall be construed to affect a defendant's ability to be released on bail or on his or her own recognizance.

(b) Unless waived by the person, the time specified in the notice to appear shall be at least 10 days after arrest if the duplicate notice is to be filed by the officer with the magistrate.

(c) The place specified in the notice shall be the court of the magistrate before whom the person would be taken if the requirement of taking an arrested person before a magistrate were complied with, or shall be an officer authorized by that court to receive a deposit of bail.

(d) The officer shall deliver one copy of the notice to appear to the arrested person, and the arrested person, in order to secure release, shall give his or her written promise to appear in court as specified in the notice by signing the duplicate notice which shall be retained by the officer, and the officer may require the arrested person, if he or she has

no satisfactory identification, to place a right thumbprint, or a left thumbprint or fingerprint if the person has a missing or disfigured right thumb, on the notice to appear. Except for law enforcement purposes relating to the identity of the arrestee, no person or entity may sell, give away, allow the distribution of, include in a database, or create a database with, this print. Upon the signing of the duplicate notice, the arresting officer shall immediately release the person arrested from custody.

(e) The officer shall, as soon as practicable, file the duplicate notice, as follows:

(1) It shall be filed with the magistrate if the offense charged is an infraction.

(2) It shall be filed with the magistrate if the prosecuting attorney has previously directed the officer to do so.

(3) The duplicate notice and underlying police reports in support of the charge or charges shall be filed with the prosecuting attorney in cases other than those specified in paragraphs (1) and (2).

If the duplicate notice is filed with the prosecuting attorney, he or she, within his or her discretion, may initiate prosecution by filing the notice or a formal complaint with the magistrate specified in the duplicate notice within 25 days from the time of arrest. If the prosecution is not to be initiated, the prosecutor shall send notice to the person arrested at the address on the notice to appear. The failure by the prosecutor to file the notice or formal complaint within 25 days of the time of the arrest shall not bar further prosecution of the misdemeanor charged in the notice to appear. However, any further prosecution shall be preceded by a new and separate citation or an arrest warrant.

Upon the filing of the notice with the magistrate by the officer, or the filing of the notice or formal complaint by the prosecutor, the magistrate may fix the amount of bail that in his or her judgment, in accordance with Section 1275, is reasonable and sufficient for the appearance of the defendant and shall endorse upon the notice a statement signed by him or her in the form set forth in Section 815a. The defendant may, prior to the date upon which he or she promised to appear in court, deposit with the magistrate the amount of bail set by the magistrate. At the time the case is called for arraignment before the magistrate, if the defendant does not appear, either in person or by counsel, the magistrate may declare the bail forfeited, and may, in his or her discretion, order that no further proceedings shall be had in the case, unless the defendant has been charged with a violation of Section 374.3 or 374.7 of this code or of Section 11357, 11360, or 13002 of the Health and Safety Code, or a violation punishable under Section 5008.7 of the Public Resources Code, and he or she has previously been convicted of a violation of that section or a violation that is punishable under that section, except in cases where the magistrate finds that undue hardship will be imposed

upon the defendant by requiring him or her to appear, the magistrate may declare the bail forfeited and order that no further proceedings be had in the case.

Upon the making of the order that no further proceedings be had, all sums deposited as bail shall immediately be paid into the county treasury for distribution pursuant to Section 1463.

(f) No warrant shall be issued for the arrest of a person who has given a written promise to appear in court, unless and until he or she has violated that promise or has failed to deposit bail, to appear for arraignment, trial, or judgment or to comply with the terms and provisions of the judgment, as required by law.

(g) The officer may book the arrested person prior to release or indicate on the citation that the arrested person shall appear at the arresting agency to be booked or indicate on the citation that the arrested person shall appear at the arresting agency to be fingerprinted prior to the date the arrested person appears in court. If it is indicated on the citation that the arrested person shall be booked or fingerprinted prior to the date of the person's court appearance, the arresting agency at the time of booking or fingerprinting shall provide the arrested person with verification of the booking or fingerprinting by making an entry on the citation. If it is indicated on the citation that the arrested person is to be booked or fingerprinted, the magistrate, judge, or court shall, before the proceedings begin, order the defendant to provide verification that he or she was booked or fingerprinted by the arresting agency. If the defendant cannot produce the verification, the magistrate, judge, or court shall require that the defendant be booked or fingerprinted by the arresting agency before the next court appearance, and that the defendant provide the verification at the next court appearance unless both parties stipulate that booking or fingerprinting is not necessary.

(h) A peace officer shall use the written notice to appear procedure set forth in this section for any misdemeanor offense in which the officer has arrested a person without a warrant pursuant to Section 836 or in which he or she has taken custody of a person pursuant to Section 847.

(i) Whenever any person is arrested by a peace officer for a misdemeanor, that person shall be released according to the procedures set forth by this chapter unless one of the following is a reason for nonrelease, in which case the arresting officer may release the person, or the arresting officer shall indicate, on a form to be established by his or her employing law enforcement agency, which of the following was a reason for the nonrelease:

(1) The person arrested was so intoxicated that he or she could have been a danger to himself or herself or to others.

(2) The person arrested required medical examination or medical care or was otherwise unable to care for his or her own safety.

(3) The person was arrested under one or more of the circumstances listed in Sections 40302 and 40303 of the Vehicle Code.

(4) There were one or more outstanding arrest warrants for the person.

(5) The person could not provide satisfactory evidence of personal identification.

(6) The prosecution of the offense or offenses for which the person was arrested, or the prosecution of any other offense or offenses, would be jeopardized by immediate release of the person arrested.

(7) There was a reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be imminently endangered by release of the person arrested.

(8) The person arrested demanded to be taken before a magistrate or refused to sign the notice to appear.

(9) There is reason to believe that the person would not appear at the time and place specified in the notice. The basis for this determination shall be specifically stated.

The form shall be filed with the arresting agency as soon as practicable and shall be made available to any party having custody of the arrested person, subsequent to the arresting officer, and to any person authorized by law to release him or her from custody before trial.

(j) Once the arresting officer has prepared the written notice to appear and has delivered a copy to the person arrested, the officer shall deliver the remaining original and all copies as provided by subdivision (e).

Any person, including the arresting officer and any member of the officer's department or agency, or any peace officer, who alters, conceals, modifies, nullifies, or destroys, or causes to be altered, concealed, modified, nullified, or destroyed, the face side of the remaining original or any copy of a citation that was retained by the officer, for any reason, before it is filed with the magistrate or with a person authorized by the magistrate to receive deposit of bail, is guilty of a misdemeanor.

If, after an arrested person has signed and received a copy of a notice to appear, the arresting officer determines that, in the interest of justice, the citation or notice should be dismissed, the arresting agency may recommend, in writing, to the magistrate that the charges be dismissed. The recommendation shall cite the reasons for the recommendation and shall be filed with the court.

If the magistrate makes a finding that there are grounds for dismissal, the finding shall be entered in the record and the charges dismissed.

Under no circumstances shall a personal relationship with any officer, public official, or law enforcement agency be grounds for dismissal.

(k) (1) A person contesting a charge by claiming under penalty of perjury not to be the person issued the notice to appear may choose to submit a right thumbprint, or a left thumbprint if the person has a missing

or disfigured right thumb, to the issuing court through his or her local law enforcement agency for comparison with the one placed on the notice to appear. A local law enforcement agency providing this service may charge the requester no more than the actual costs. The issuing court may refer the thumbprint submitted and the notice to appear to the prosecuting attorney for comparison of the thumbprints. When there is no thumbprint or fingerprint on the notice to appear, or when the comparison of thumbprints is inconclusive, the court shall refer the notice to appear or copy thereof back to the issuing agency for further investigation, unless the court finds that referral is not in the interest of justice.

(2) Upon initiation of the investigation or comparison process by referral of the court, the court shall continue the case and the speedy trial period shall be tolled for 45 days.

(3) Upon receipt of the issuing agency's or prosecuting attorney's response, the court may make a finding of factual innocence pursuant to Section 530.6 if the court determines that there is insufficient evidence that the person cited is the person charged and shall immediately notify the Department of Motor Vehicles of its determination. If the Department of Motor Vehicles determines the citation or citations in question formed the basis of a suspension or revocation of the person's driving privilege, the department shall immediately set aside the action.

(4) If the prosecuting attorney or issuing agency fails to respond to a court referral within 45 days, the court shall make a finding of factual innocence pursuant to Section 530.6, unless the court finds that a finding of factual innocence is not in the interest of justice.

(5) The citation or notice to appear may be held by the prosecuting attorney or issuing agency for future adjudication should the arrestee who received the citation or notice to appear be found.

(*l*) For purposes of this section, the term ''arresting agency'' includes any other agency designated by the arresting agency to provide booking or fingerprinting services.

SEC. 5. 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). In recognition of the state and local interests served by the action made optional in this subdivision, the Legislature encourages the assessor to continue taking the action formerly mandated by this subdivision.

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

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

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

SEC. 6. 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) In recognition of the state and local interests served by the action made optional for a local authority in subdivision (b), 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. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make 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 890

An act to amend Section 44763 of the Education Code, and to amend Sections 17500, 17513, 17520, 17521, 17522, 17526, 17551, 17553, 17554, 17557, 17558, 17558.5, 17561, 17561.5, 17561.6, 17562, 17564, 17579, 17612, 17615.1, 17615.4, 17616, and 17630 of, to add Sections 17517.5 and 17518.5 to, to repeal Sections 17517, 17610, and 17614 of, and to repeal and add Section 17555 of, the Government Code, relating to state mandates.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 2004.]

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

SECTION 1. Section 44763 of the Education Code is amended to read:

44763. (a) Notwithstanding Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code or any other provision of law, each state and local government agency shall provide to the Commission on Teacher Credentialing personal information regarding teachers and other certificated personnel as requested by the commission for the purposes of Section 44762.

(b) In accordance with the purpose of safeguarding the privacy rights of individuals, it is the intent of the Legislature that personal information be collected, maintained, and disseminated under this chapter only to the extent required to accomplish the purposes of Section 44762. The Commission on Teacher Credentialing shall establish and maintain specific and appropriate policies and practices that protect the privacy rights of individuals as to whom personal information has been received by the commission, and to otherwise implement the legislative intent set forth in this subdivision.

SEC. 2. Section 17500 of the Government Code is amended to read:

17500. The Legislature finds and declares that the existing system for reimbursing local agencies and school districts for the costs of state-mandated local programs has not provided for the effective determination of the state's responsibilities under Section 6 of Article XIII B of the California Constitution. The Legislature finds and declares that the failure of the existing process to adequately and consistently resolve the complex legal questions involved in the determination of state-mandated costs has led to an increasing reliance by local agencies and school districts on the judiciary and, therefore, in order to relieve unnecessary congestion of the judicial system, it is necessary to create a mechanism which is capable of rendering sound quasi-judicial

decisions and providing an effective means of resolving disputes over the existence of state-mandated local programs.

It is the intent of the Legislature in enacting this part to provide for the implementation of Section 6 of Article XIII B of the California Constitution. Further, the Legislature intends that the Commission on State Mandates, as a quasi-judicial body, will act in a deliberative manner in accordance with the requirements of Section 6 of Article XIII B of the California Constitution.

SEC. 3. Section 17513 of the Government Code is amended to read:

17513. ''Costs mandated by the federal government'' means any increased costs incurred by a local agency or school district after January 1, 1973, in order to comply with the requirements of a federal statute or regulation. ''Costs mandated by the federal government'' includes costs resulting from enactment of a state law or regulation where failure to enact that law or regulation to meet specific federal program or service requirements imposed upon the state would result in substantial monetary penalties or loss of funds to public or private persons in the state whether the federal law was enacted before or after the enactment of the state law, regulation, or executive order. ''Costs mandated by the federal government'' does not include costs which are specifically reimbursed or funded by the federal or state government or programs or services which may be implemented at the option of the state, local agency, or school district.

SEC. 4. Section 17517 of the Government Code is repealed.

SEC. 5. Section 17517.5 is added to the Government Code, to read:

17517.5. ''Cost savings authorized by the state'' means any decreased costs that a local agency or school district realizes as a result of any statute enacted or any executive order adopted that permits or requires the discontinuance of or a reduction in the level of service of an existing program that was mandated before January 1, 1975.

SEC. 6. Section 17518.5 is added to the Government Code, to read:

17518.5. (a) ''Reasonable reimbursement methodology'' means a formula for reimbursing local agency and school district costs mandated by the state that meets the following conditions:

(1) The total amount to be reimbursed statewide is equivalent to total estimated local agency and school district costs to implement the mandate in a cost-efficient manner.

(2) For 50 percent or more of eligible local agency and school district claimants, the amount reimbursed is estimated to fully offset their projected costs to implement the mandate in a cost-efficient manner.

(b) Whenever possible, a reasonable reimbursement methodology shall be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual local costs. In cases when local

agencies and school districts are projected to incur costs to implement a mandate over a period of more than one fiscal year, the determination of a reasonable reimbursement methodology may consider local costs and state reimbursements over a period of greater than one fiscal year, but not exceeding 10 years.

(c) A reasonable reimbursement methodology may be developed by any of the following:

(1) The Department of Finance.

(2) The Controller.

(3) An affected state agency.

(4) A claimant.

(5) An interested party.

SEC. 7. Section 17520 of the Government Code is amended to read:

17520. ''Special district'' means any agency of the state that performs governmental or proprietary functions within limited boundaries. ''Special district'' includes a county service area, a maintenance district or area, an improvement district or improvement zone, or any other zone or area. ''Special district'' does not include a city, a county, a school district, or a community college district.

County free libraries established pursuant to Chapter 2 (commencing with Section 27151) of Division 20 of the Education Code, areas receiving county fire protection services pursuant to Section 25643 of the Government Code, and county road districts established pursuant to Chapter 7 (commencing with Section 1550) of Division 2 of the Streets and Highways Code shall be considered ''special districts'' for all purposes of this part.

SEC. 8. Section 17521 of the Government Code is amended to read:

17521. ''Test claim'' means the first claim filed with the commission alleging that a particular statute or executive order imposes costs mandated by the state.

SEC. 9. Section 17522 of the Government Code is amended to read:

17522. (a) ''Initial reimbursement claim'' means a claim filed with the Controller by a local agency or school district for costs to be reimbursed for the fiscal years specified in the first claiming instructions issued by the Controller pursuant to subdivision (b) of Section 17558.

(b) ''Annual reimbursement claim'' means a claim for actual costs incurred in a prior fiscal year filed with the Controller by a local agency or school district for which appropriations are made to the Controller for this purpose.

(c) ''Estimated reimbursement claim'' means a claim filed with the Controller by a local agency or school district in conjunction with an initial reimbursement claim, annual reimbursement claim, or at other times, for estimated costs to be reimbursed during the current or future

fiscal years, for which appropriations are made to the Controller for this purpose.

(d) ''Entitlement claim'' means a claim filed by a local agency or school district with the Controller for the purpose of establishing or adjusting a base year entitlement. All entitlement claims are subject to Section 17616.

SEC. 10. Section 17526 of the Government Code is amended to read:

17526. (a) All meetings of the commission shall be open to the public, except that the commission may meet in executive session to consider the appointment or dismissal of officers or employees of the commission or to hear complaints or charges brought against a member, officer, or employee of the commission.

(b) The commission shall meet at least once every two months.

(c) The time and place of meetings may be set by resolution of the commission, by written petition of a majority of the members, or by written call of the chairperson. The chairperson may, for good cause, change the starting time or place, reschedule, or cancel any meeting.

SEC. 11. Section 17551 of the Government Code is amended to read:

17551. (a) The commission, pursuant to the provisions of this chapter, shall hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to be reimbursed by the state for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution.

(b) Commission review of claims may be had pursuant to subdivision (a) only if the test claim is filed within the time limits specified in this section.

(c) Local agency and school district test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.

(d) The commission, pursuant to the provisions of this chapter, shall hear and decide upon a claim by a local agency or school district filed on or after January 1, 1985, that the Controller has incorrectly reduced payments to the local agency or school district pursuant to paragraph (2) of subdivision (d) of Section 17561.

SEC. 12. Section 17553 of the Government Code is amended to read:

17553. (a) The commission shall adopt procedures for receiving claims pursuant to this article and for providing a hearing on those claims. The procedures shall do all of the following:

(1) Provide for presentation of evidence by the claimant, the Department of Finance and any other affected department or agency, and any other interested person.

(2) Ensure that a statewide cost estimate is adopted within 12 months after receipt of a test claim, when a determination is made by the commission that a mandate exists. This deadline may be extended for up to six months upon the request of either the claimant or the commission.

(3) Permit the hearing of a claim to be postponed at the request of the claimant, without prejudice, until the next scheduled hearing.

(b) All test claims shall be filed on a form prescribed by the commission and shall contain at least the following elements and documents:

(1) A written narrative that identifies the specific sections of statutes or executive orders alleged to contain a mandate and shall include all of the following:

(A) A detailed description of the new activities and costs that arise from the mandate.

(B) A detailed description of existing activities and costs that are modified by the mandate.

(C) The actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate.

(D) The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.

(E) A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.

(F) Identification of all of the following:

(i) Dedicated state funds appropriated for this program.

(ii) Dedicated federal funds appropriated for this program.

(iii) Other nonlocal agency funds dedicated for this program.

(iv) The local agency's general purpose funds for this program.

(v) Fee authority to offset the costs of this program.

(G) Identification of prior mandate determinations made by the Board of Control or the Commission on State Mandates that may be related to the alleged mandate.

(2) The written narrative shall be supported with declarations under penalty of perjury, based on the declarant's personal knowledge, information or belief, and signed by persons who are authorized and competent to do so, as follows:

(A) Declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.

(B) Declarations identifying all local, state, or federal funds, or fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs.

(C) Declarations describing new activities performed to implement specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program. Specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program.

(3) (A) The written narrative shall be supported with copies of all of the following:

(i) The test claim statute that includes the bill number or executive order, alleged to impose or impact a mandate.

(ii) Relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate.

(iii) Administrative decisions and court decisions cited in the narrative.

(B) State mandate determinations made by the Board of Control and the Commission on State Mandates and published court decisions on state mandate determinations made by the Commission on State Mandates are exempt from this requirement.

(4) A test claim shall be signed at the end of the document, under penalty of perjury by the claimant or its authorized representative, with the declaration that the test claim is true and complete to the best of the declarant's personal knowledge or information or belief. The date of signing, the declarant's title, address, telephone number, facsimile machine telephone number, and electronic mail address shall be included.

(c) If a completed test claim is not received by the commission within 30 calendar days from the date that an incomplete test claim was returned by the commission, the original test claim filing date may be disallowed, and a new test claim may be accepted on the same statute or executive order.

(d) In addition, the commission shall determine whether an incorrect reduction claim is complete within 10 days after the date that the incorrect reduction claim is filed. If the commission determines that an incorrect reduction claim is not complete, the commission shall notify the local agency and school district that filed the claim stating the reasons that the claim is not complete. The local agency or school district shall have 30 days to complete the claim. The commission shall serve a copy of the complete incorrect reduction claim on the Controller. The Controller shall have no more than 90 days after the date the claim is delivered or mailed to file any rebuttal to an incorrect reduction claim. The failure of the Controller to file a rebuttal to an incorrect reduction

claim shall not serve to delay the consideration of the claim by the commission.

SEC. 13. Section 17554 of the Government Code is amended to read:

17554. With the agreement of all parties to the claim, the commission may waive the application of any procedural requirement imposed by this chapter or pursuant to Section 17553. The authority granted by this section includes the consolidation of claims and the shortening of time periods.

SEC. 14. Section 17555 of the Government Code is repealed.

SEC. 15. Section 17555 is added to the Government Code, to read:

17555. (a) No later than 30 days after hearing and deciding upon a test claim pursuant to subdivision (a) of Section 17551, the commission shall notify the appropriate Senate and Assembly policy and fiscal committees, the Legislative Analyst, the Department of Finance, and the Controller of that decision.

(b) For purposes of this section, the ''appropriate policy committee'' means the policy committee that has jurisdiction over the subject matter of the statute, regulation, or executive order, and bills relating to that subject matter would have been heard.

SEC. 16. 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 17551, 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 a reasonable reimbursement methodology.

(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, but before the test claim is set for a hearing, without affecting the original filing date as long as the amendment substantially relates to the original test claim.

(f) In adopting parameters and guidelines, the commission shall consult with the Department of Finance, the affected state agency, the Controller, the fiscal and policy committees of the Assembly and Senate, the Legislative Analyst, and the claimants to consider a reasonable reimbursement methodology that balances accuracy with simplicity.

SEC. 17. 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 shall request assistance from the Department of Finance and 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 17557 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. 18. 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 not 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. 19. 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 which 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 17551 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. 20. Section 17561.5 of the Government Code is amended to read:

17561.5. The payment of an initial reimbursement claim by the Controller shall include accrued interest at the Pooled Money Investment Account rate, if the payment is being made more than 365 days after adoption of the statewide cost estimate for an initial claim or, in the case of payment of a subsequent claim relating to that same statute or executive order, if payment is being made more than 60 days after the filing deadline for, or the actual date of receipt of, the subsequent claim, whichever is later. In those instances, interest shall begin to accrue as of the 366th day after adoption of the statewide cost estimate for an initial claim and as of the 61st day after the filing deadline for, or actual date of receipt of, the subsequent claim, whichever is later.

SEC. 21. Section 17561.6 of the Government Code is amended to read:

17561.6. A budget act item or appropriation pursuant to this part for reimbursement of claims shall include an amount necessary to reimburse any interest due pursuant to Section 17561.5.

SEC. 22. Section 17562 of the Government Code is amended to read:

17562. (a) The Legislature hereby finds and declares that the increasing revenue constraints on state and local government and the increasing costs of financing state-mandated local programs make evaluation of state-mandated local programs imperative. Accordingly, it is the intent of the Legislature to increase information regarding state mandates and establish a method for regularly reviewing the costs and benefits of state-mandated local programs.

(b) The Controller shall submit a report to the Joint Legislative Budget Committee and fiscal committees by January 1 of each year. This report shall summarize, by state mandate, the total amount of claims paid per fiscal year and the amount, if any, of mandate deficiencies or surpluses. This report shall be made available in an electronic spreadsheet format. The report shall compare the annual cost of each mandate to the statewide cost estimate adopted by the commission.

(c) After the commission submits its second semiannual report to the Legislature pursuant to Section 17600, the Legislative Analyst shall submit a report to the Joint Legislative Budget Committee and legislative fiscal committees on the mandates included in the commission's reports. The report shall make recommendations as to whether the mandate should be repealed, funded, suspended, or modified.

(d) In its annual analysis of the Budget Bill and based on information provided pursuant to subdivision (b), the Legislative Analyst shall identify mandates that significantly exceed the statewide cost estimate adopted by the commission. The Legislative Analyst shall make

recommendations on whether the mandate should be repealed, funded, suspended, or modified.

(e) (1) A statewide association of local agencies or school districts or a Member of the Legislature may submit a proposal to the Legislature recommending the elimination or modification of a state-mandated local program. To make such a proposal, the association or member shall submit a letter to the Chairs of the Assembly Committee on Education or the Assembly Committee on Local Government, as the case may be, and the Senate Committee on Education or the Senate Committee on Local Government, as the case may be, specifying the mandate and the concerns and recommendations regarding the mandate. The association or member shall include in the proposal all information relevant to the conclusions. If the chairs of the committees desire additional analysis of the submitted proposal, the chairs may refer the proposal to the Legislative Analyst for review and comment. The chairs of the committees may refer up to a total of 10 of these proposals to the Legislative Analyst for review in any year. Referrals shall be submitted to the Legislative Analyst by December 1 of each year.

(2) The Legislative Analyst shall review and report to the Legislature with regard to each proposal that is referred to the office pursuant to paragraph (1). The Legislative Analyst shall recommend that the Legislature adopt, reject, or modify the proposal. The report and recommendations shall be submitted annually to the Legislature by March 1 of the year subsequent to the year in which referrals are submitted to the Legislative Analyst.

(3) The Department of Finance shall review all statutes enacted each year that contain provisions making inoperative Section 17561 or Section 17565 that have resulted in costs or revenue losses mandated by the state that were not identified when the statute was enacted. The review shall identify the costs or revenue losses involved in complying with the statutes. The Department of Finance shall also review all statutes enacted each year that may result in cost savings authorized by the state. The Department of Finance shall submit an annual report of the review required by this subdivision, together with the recommendations as it may deem appropriate, by December 1 of each year.

(f) It is the intent of the Legislature that the Assembly Committee on Local Government and the Senate Committee on Local Government hold a joint hearing each year regarding the following:

(1) The reports and recommendations submitted pursuant to subdivision (e).

(2) The reports submitted pursuant to Sections 17570, 17600, and 17601.

(3) Legislation to continue, eliminate, or modify any provision of law reviewed pursuant to this subdivision. The legislation may be by subject area or by year or years of enactment.

SEC. 23. Section 17564 of the Government Code is amended to read:

17564. (a) No claim shall be made pursuant to Sections 17551 and 17561, nor shall any payment be made on claims submitted pursuant to Sections 17551 and 17561, unless these claims exceed one thousand dollars ($1,000), provided that a county superintendent of schools or county may submit a combined claim on behalf of school districts, direct service districts, or special districts within their county if the combined claim exceeds one thousand dollars ($1,000) even if the individual school district's, direct service district's, or special district's claims do not each exceed one thousand dollars ($1,000). The county superintendent of schools or the county shall determine if the submission of the combined claim is economically feasible and shall be responsible for disbursing the funds to each school, direct service, or special district. These combined claims may be filed only when the county superintendent of schools or the county is the fiscal agent for the districts. All subsequent claims based upon the same mandate shall only be filed in the combined form unless a school district, direct service district, or special district provides to the county superintendent of schools or county and to the Controller, at least 180 days prior to the deadline for filing the claim, a written notice of its intent to file a separate claim.

(b) Claims for direct and indirect costs filed pursuant to Section 17561 shall be filed in the manner prescribed in the parameters and guidelines and claiming instructions.

SEC. 24. Section 17579 of the Government Code is amended to read:

17579. Any bill introduced or amended for which the Legislative Counsel has determined the bill will mandate a new program or higher level of service pursuant to Section 6 of Article XIII B of the California Constitution shall contain a section specifying that reimbursement shall be made pursuant to this chapter or that the mandate is being disclaimed and the reason therefor.

SEC. 25. Section 17610 of the Government Code is repealed.

SEC. 26. Section 17612 of the Government Code is amended to read:

17612. (a) Immediately upon receipt of the report submitted by the commission pursuant to Section 17600, a local government claims bill shall be introduced in the Legislature. The local government claims bill, at the time of its introduction, shall provide for an appropriation sufficient to pay the estimated costs of these mandates.

(b) The Legislature may amend, modify, or supplement the parameters and guidelines for mandates contained in the local government claims bill. If the Legislature amends, modifies, or supplements the parameters and guidelines, it shall make a declaration in the local government claims bill specifying the basis for the amendment, modification, or supplement.

(c) If the Legislature deletes from a local government claims bill funding for a mandate, the local agency or school district may file in the Superior Court of the County of Sacramento an action in declaratory relief to declare the mandate unenforceable and enjoin its enforcement.

SEC. 27. Section 17614 of the Government Code is repealed.

SEC. 28. Section 17615.1 of the Government Code is amended to read:

17615.1. The commission shall establish a procedure for reviewing, upon request, mandated cost programs for which appropriations have been made by the Legislature for the 1982–83, 1983–84, and 1984–85 fiscal years, or any three consecutive fiscal years thereafter. At the request of the Department of Finance, the Controller, or any local agency or school district receiving reimbursement for the mandated program, the commission shall review the mandated cost program to determine whether the program should be included in the State Mandates Apportionment System. If the commission determines that the State Mandates Apportionment System would accurately reflect the costs of the state-mandated program, the commission shall direct the Controller to include the program in the State Mandates Apportionment System.

SEC. 29. Section 17615.4 of the Government Code is amended to read:

17615.4. (a) When a new mandate imposes costs that are funded either by legislation or in local government claims bills, local agencies and school districts may file reimbursement claims as required by Section 17561, for a minimum of three years after the initial funding of the new mandate.

(b) After actual cost claims are submitted for three fiscal years against such a new mandate, the commission shall determine, upon request of the Controller or a local entity or school district receiving reimbursement for the program, whether the amount of the base year entitlement adjusted by changes in the deflator and workload accurately reflects the costs incurred by the local agency or school district. If the commission determines that the base year entitlement, as adjusted, does accurately reflect the costs of the program, the commission shall direct the Controller to include the program in the State Mandates Apportionment System.

(c) The Controller shall make recommendations to the commission and the commission shall consider the Controller's recommendations

for each new mandate submitted for inclusion in the State Mandates Apportionment System. All claims included in the State Mandates Apportionment System pursuant to this section are also subject to the audit provisions of Section 17616.

SEC. 30. Section 17616 of the Government Code is amended to read:

17616. The Controller shall have the authority to do either or both of the following:

(a) Audit the fiscal years comprising the base year entitlement no later than three years after the year in which the base year entitlement is established. The results of such audits shall be used to adjust the base year entitlements and any subsequent apportionments based on that entitlement, in addition to adjusting actual cost payments made for the base years audited.

(b) Verify that any local agency or school district receiving funds pursuant to this article is providing the reimbursed activities.

SEC. 31. Section 17630 of the Government Code is amended to read:

17630. Except for Article 5, the provisions of this part shall be applicable to claims for state reimbursement of costs mandated by the state on and after January 1, 1985. All claims for state reimbursement filed under Article 1 (commencing with Section 2201), Article 2 (commencing with Section 2227), and Article 3 (commencing with Section 2240) of Chapter 3 of Part 4 of Division 1 of the Revenue and Taxation Code that have not been included in a local government claims bill pursuant to Section 2255 of the Revenue and Taxation Code enacted before January 1, 1985, shall be transferred to and considered by the commission pursuant to the provisions of this part.

CHAPTER 891

An act to add Chapter 8.6 (commencing with Section 42490) to Part 3 of Division 30 of the Public Resources Code, relating to solid waste.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 2004.]

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

SECTION 1. Chapter 8.6 (commencing with Section 42490) is added to Part 3 of Division 30 of the Public Resources Code, to read:

CHAPTER 8.6. CELL PHONE RECYCLING ACT OF 2004

Article 1. General Provisions

42490. This act shall be known, and may be cited as, the Cell Phone Recycling Act of 2004.

42490.1. The Legislature finds and declares all of the following:

(a) The purpose of this chapter is to enact a comprehensive and innovative system for the reuse, recycling, and proper and legal disposal of used cell phones.

(b) It is the further purpose of this chapter to enact a law that establishes a program that is convenient for consumers and the public to return, recycle, and ensure the safe and environmentally sound disposal of used cell phones, and providing a system that does not charge when a cell phone is returned.

(c) It is the intent of the Legislature that the cost associated with the handling, recycling, and disposal of used cell phones be the responsibility of the producers and consumers of cell phones, and not local government or their service providers, state government, or taxpayers.

(d) In order to reduce the likelihood of illegal disposal of hazardous materials, it is the intent of this chapter to ensure that all costs associated with the proper management of used cell phones is internalized by the producers and consumers of cell phones at or before the point of purchase, and not at the point of discard.

(e) Manufacturers and retailers of cell phones and cell phone service providers, in working to achieve the goals and objectives of this chapter, should have the flexibility to partner with each other and with those private and nonprofit business enterprises that currently provide collection and processing services to develop and promote a safe and effective used cell phone recycling system for California.

(f) The producers of cell phones should reduce and, to the extent feasible, ultimately phase out the use of hazardous materials in cell phones.

(g) Cell phones, to the greatest extent feasible, should be designed for extended life, repair, and reuse.

(h) The purpose of this chapter is to provide for the safe, cost free, and convenient collection, reuse, and recycling of 100 percent of the used cell phones discarded or offered for recycling in the state.

(i) In establishing a cost effective system for the recovery, reuse, recycling and proper disposal of used cell phones, it is the intent of the Legislature to encourage manufacturers, retailers and service providers to build on the retailer take-back systems initiated recently by some cell phone service providers.

(j) An estimated 5 percent of obsolete cell phones are currently being recycled through a mechanism, whereby private sector recyclers provide retailers with a postage paid box for mailing returned cell phones to the recycler at no cost to the retailers. In some instances, the scrap value of these used phones is sufficient for the recycler to either pay the retailer or make a financial contribution on behalf of the retailer to a nonprofit charity. It is the intent of the Legislature that this model system be substantially expanded as a result of the enactment of this act.

Article 2. Definitions

42493. For the purposes of this chapter, the following terms have the following meanings, unless the context clearly requires otherwise:

(a) ''Cell phone'' means a wireless telephone device that is designed to send or receive transmissions through a cellular radiotelephone service, as defined in Section 22.99 of Title 47 of the Code of Federal Regulations. A cell phone includes the rechargeable battery that may be connected to that cell phone. A cell phone does not include a wireless telephone device that is integrated into the electrical architecture of a motor vehicle.

(b) ''Consumer'' means a purchaser or owner of a cell phone. ''Consumer'' also includes a business, corporation, limited partnership, nonprofit organization, or governmental entity, but does not include an entity involved in a wholesale transaction between a distributor and retailer.

(c) ''Department'' means the Department of Toxic Substances Control.

(d) ''Retailer'' means a person who sells a cell phone in the state to a consumer, including a manufacturer of a cell phone who sells that cell phone directly to a consumer. A sale includes, but is not limited to, transactions conducted through sales outlets, catalogs, or the Internet, or any other similar electronic means, but does not include a sale that is a wholesale transaction with a distributor or retailer.

(e) (1) ''Sell'' or ''sale'' means a transfer for consideration of title or of the right to use, by lease or sales contract, including, but not limited to, transactions conducted through sales outlets, catalogs, or the Internet or any other, similar electronic means, but does not include a wholesale transaction with a distributor or a retailer.

(2) For purposes of this subdivision and subdivision (d), ''distributor'' means a person who sells a cell phone to a retailer.

(f) ''Used cell phone'' means a cell phone that has been previously used and is made available, by a consumer, for reuse, recycling, or proper disposal.

Article 3. Cell Phone Recycling

42494. (a) On and after July 1, 2006, every retailer of cell phones sold in this state shall have in place a system for the acceptance and collection of used cell phones for reuse, recycling, or proper disposal.

(b) A system for the acceptance and collection of used cell phones for reuse, recycling, or proper disposal shall, at a minimum, include all of the following elements:

(1) The take-back from the consumer of a used cell phone that the retailer sold or previously sold to the consumer, at no cost to that consumer. The retailer may require proof of purchase.

(2) The take-back of a used cell phone from a consumer who is purchasing a new cell phone from that retailer, at no cost to that consumer.

(3) If the retailer delivers a cell phone directly to a consumer in this state, the system provides the consumer, at the time of delivery, with a mechanism for the return of used cell phones for reuse, recycling, or proper disposal, at no cost to the consumer.

(4) Make information available to consumers about cell phone recycling opportunities provided by the retailer and encourage consumers to utilize those opportunities. This information may include, but is not limited to, one or more of the following:

(A) Signage that is prominently displayed and easily visible to the consumer.

(B) Written materials provided to the consumer at the time of purchase or delivery, or both.

(C) Reference to the cell phone recycling opportunity in retailer advertising or other promotional materials, or both.

(D) Direct communications with the consumer at the time of purchase.

(c) Paragraph (4) of subdivision (b) does not apply to a retailer that only sells prepaid cell phones and does not provide the ability for a consumer to sign a contract for cell phone service.

42495. On and after July 1, 2006, it is unlawful to sell a cell phone to a consumer in this state unless the retailer of that cell phone complies with this chapter.

Article 4. Statewide Recycling Goals

42496.4. On July 1, 2007, and each July 1, thereafter, the department shall post on its Web site an estimated California recycling rate for cell phones, the numerator of which shall be the estimated number of cell phones returned for recycling in California during the previous calendar year, and the denominator of which is the number of

cell phones estimated to be sold in this state during the previous calendar year.

Article 5. State Agency Procurement

42498. (a) A state agency that purchases or leases cell phones shall require each prospective bidder, to certify that it, and its agents, subsidiaries, partners, joint venturers, and subcontractors for the procurement, have complied with this chapter and any regulations adopted pursuant to this chapter, or to demonstrate that this chapter is inapplicable to all lines of business engaged in by the bidder, its agents, subsidiaries, partners, joint venturers, or subcontractors.

(b) Failure to provide certification pursuant to this section shall render the prospective bidder and its agents, subsidiaries, partners, joint venturers, and subcontractors ineligible to bid on the procurement of cell phones.

(c) The bid solicitation documents shall specify that the prospective bidder is required to cooperate fully in providing reasonable access to its records and documents that evidence compliance with this chapter.

(d) Any person awarded a contract by a state agency that is found to be in violation of this section is subject to the following sanctions:

(1) The contract shall be voided by the state agency to which the equipment, materials, or supplies were provided.

(2) The contractor is ineligible to bid on any state contract for a period of three years.

(3) If the Attorney General establishes in the name of the people of the State of California that any money, property, or benefit was obtained by a contractor as a result of violating this section, the court may, in addition to any other remedy, order the disgorgement of the unlawfully obtained money, property, or benefit in the interest of justice.

Article 6. Effect of Act

42499. This chapter shall not be construed to affect Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code, any regulation adopted pursuant to that chapter, or any obligation imposed on a person pursuant to that chapter, relating to cell phones or used cell phones.

SEC. 2. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

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CHAPTER 892

An act to amend Section 12715 of the Government Code, relating to tribal gaming, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 2004.]

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

SECTION 1. Section 12715 of the Government Code, as amended by Chapter 227 of the Statutes of 2004, 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 a county 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. 1.5. Section 12715 of the Government Code, as amended by Chapter 227 of the Statutes of 2004, 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) Except as provided in Section 12715.5, 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 a county 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. 2. Section 1.5 of this bill incorporates amendments to Section 12715 of the Government Code proposed by both this bill and AB 675. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2005, but this bill becomes operative first, (2) each bill amends Section 12715 of the Government Code, and (3) this bill is enacted after AB 675, in which case Section 12715 of the Government Code, as amended by Section 1 of this bill, shall remain operative only until the operative date of AB 675, at which time Section 1.5 of this bill shall become operative.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to prevent the funds allocated to County Tribal Casino Accounts and Individual Tribal Casino Accounts from reverting back to the Indian Gaming Special Distribution Fund, it is necessary for this act to take effect immediately.

CHAPTER 893

An act to amend Section 368 of the Penal Code, relating to elder abuse.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 2004.]

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

SECTION 1. Section 368 of the Penal Code is amended to read:

368. (a) The Legislature finds and declares that crimes against elders and dependent adults are deserving of special consideration and protection, not unlike the special protections provided for minor children, because elders and dependent adults may be confused, on various medications, mentally or physically impaired, or incompetent, and therefore less able to protect themselves, to understand or report criminal conduct, or to testify in court proceedings on their own behalf.

(b) (1) Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health is endangered, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not to exceed six thousand dollars ($6,000), or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or four years.

(2) If in the commission of an offense described in paragraph (1), the victim suffers great bodily injury, as defined in Section 12022.7, the defendant shall receive an additional term in the state prison as follows:

(A) Three years if the victim is under 70 years of age.

(B) Five years if the victim is 70 years of age or older.

(3) If in the commission of an offense described in paragraph (1), the defendant proximately causes the death of the victim, the defendant shall receive an additional term in the state prison as follows:

(A) Five years if the victim is under 70 years of age.

(B) Seven years if the victim is 70 years of age or older.

(c) Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health may be endangered, is guilty of a misdemeanor. A second or subsequent violation of this subdivision is punishable by a fine not to exceed two thousand dollars ($2,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

(d) Any person who is not a caretaker who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, or who violates Section 530.5 proscribing identity theft, with respect to the property or personal identifying information of an elder or a dependent adult, and who knows or reasonably should know that the victim is an elder or a dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding four hundred dollars ($400); and by a fine not exceeding one thousand dollars ($1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding four hundred dollars ($400).

(e) Any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, or who violates Section 530.5 proscribing identity theft, with respect to the property or personal identifying information of that elder or dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding four hundred dollars ($400), and by a fine not exceeding one thousand dollars ($1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding four hundred dollars ($400).

(f) Any person who commits the false imprisonment of an elder or a dependent adult by the use of violence, menace, fraud, or deceit is

punishable by imprisonment in the state prison for two, three, or four years.

(g) As used in this section, ''elder'' means any person who is 65 years of age or older.

(h) As used in this section, ''dependent adult'' means any person who is between the ages of 18 and 64, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. ''Dependent adult'' includes any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(i) As used in this section, ''caretaker'' means any person who has the care, custody, or control of, or who stands in a position of trust with, an elder or a dependent adult.

(j) Nothing in this section shall preclude prosecution under both this section and Section 187 or 12022.7 or any other provision of law. However, a person shall not receive an additional term of imprisonment under both paragraphs (2) and (3) of subdivision (b) for any single offense, nor shall a person receive an additional term of imprisonment under both Section 12022.7 and paragraph (2) or (3) of subdivision (b) for any single offense.

(k) In any case in which a person is convicted of violating these provisions, the court may require him or her to receive appropriate counseling as a condition of probation. Any defendant ordered to be placed in a counseling program shall be responsible for paying the expense of his or her participation in the counseling program as determined by the court. The court shall take into consideration the ability of the defendant to pay, and no defendant shall be denied probation because of his or her inability to pay.

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 894

An act to amend Section 17070.15 of, to amend, repeal, and add Sections 17072.10, 17072.30, and 17072.32 of, to add Section 17070.99 to, and to add and repeal Section 17074.32 of, the Education Code, relating to school facilities.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 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) Research has shown that school size is an important predictor of pupil success, second only to socioeconomic status. The research literature clearly states the superiority of small schools as learning environments. In small schools all of the following occur:

(A) Dropout and truancy rates dramatically decrease and graduation rates and postsecondary education enrollment rates increase.

(B) Parents are much more likely to be involved in the school and to have greater participation in decisionmaking.

(C) Pupils experience a greater sense of belonging and are more satisfied with their schools.

(D) Fewer discipline problems occur.

(E) Crime, violence, and gang participation decrease.

(F) Incidences of alcohol and tobacco abuse decrease.

(G) Pupil attendance increases.

(2) A recent study of large and small schools in four states has shown that smaller schools reduce the damaging effects of poverty and help pupils narrow the achievement gap between them and pupils from more affluent communities.

(3) Reducing school size has also been shown to significantly increase the likelihood of success of school reform efforts. Small schools are more effective at staff development and in implementing new curriculum.

(4) Based upon the research on the benefits of small schools, the United States Department of Education has created the Smaller Learning Communities Program and is currently providing a small number of planning and implementation grants to school districts across the country to support the development of small schools and small learning communities.

(5) Other states have recognized the value of small schools and have developed state policy to encourage small schools development. In Florida, for example, all schools built after 2003 will be small schools.

(6) Many parent groups and school districts in the state, including Oakland, Sacramento, San Jose, Los Angeles, and San Francisco, have initiated efforts to create small schools. These efforts include the creation of new small schools on new sites as well as the reconfiguration of existing schools into small schools and small learning communities.

(7) The trend in California, over the last few decades, has been to build larger and larger schools. For example, in 2000, more than 73 percent of California high schools had more than 1,000 pupils and more than 57 percent of middle schools had more than 800 pupils.

(8) The trend to build large schools has been driven by California's rapidly growing population and by the assumption that large schools are more cost effective.

(9) Research, however, has also shown that small schools, due to lower dropout rates and factors such as reduced school violence, can be more cost effective in per pupil spending than large schools.

(b) It is therefore the intent of the Legislature to enact changes in state law to create an incentive for school districts to establish smaller learning communities through increasing the state's share of schools facilities funding for the construction of new small schools and for the reconfiguration of existing schoolsites to support smaller learning communities.

SEC. 2. Section 17070.15 of the Education Code is amended to read:

17070.15. The following terms, wherever used or referred to in this chapter, shall have the following meanings, respectively, unless a different meaning appears from the context:

(a) ''Apportionment'' means a reservation of funds for the purpose of eligible new construction, modernization, or hardship approved by the board for an applicant school district.

(b) ''Attendance area'' means the geographical area serving an existing high school and those junior high schools and elementary schools included therein.

(c) ''Board'' means the State Allocation Board as established by Section 15490 of the Government Code.

(d) ''Department'' means the Department of General Services.

(e) ''Committee'' means the State School Building Finance Committee established pursuant to Section 15909.

(f) ''Modernization'' means any modification of a permanent structure that is at least 25 years old, or in the case of a portable classroom, that is at least 20 years old, that will enhance the ability of the structure to achieve educational purposes.

(g) ''Property'' includes all property, real, personal or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of this chapter.

(h) ''School district'' means a school district or a county office of education. For purposes of determining eligibility under this chapter, ''school district'' may also mean a high school attendance area.

(i) ''Fund'' means the 1998 State School Facilities Fund, the 2002 State School Facilities Fund, or the 2004 State School Facilities Fund, as the case may be, established pursuant to Section 17070.40.

(j) ''County fund'' means a county school facilities fund established pursuant to Section 17070.43.

(k) ''Portable classroom'' means a classroom building of one or more stories that is designed and constructed to be relocatable and transportable over public streets, and with respect to a single story portable classroom, is designed and constructed for relocation without the separation of the roof or floor from the building and when measured at the most exterior walls, has a floor area not in excess of 2,000 square feet.

(*l*) ''School building capacity'' means the capacity of a school building to house pupils.

(m) ''Small high school'' means a high school with a total enrollment of no more than 500 pupils.

SEC. 3. Section 17070.99 is added to the Education Code, to read:

17070.99. (a) The board shall conduct an evaluation on the cost of new construction and modernization of small high schools in conjunction with the pilot program established pursuant to subdivision (c) of Section 17072.10, as it read on January 1, 2005.

(b) The State Department of Education shall conduct an evaluation that focuses on pupil outcomes, including, but not limited to, academic achievement and college attendance rates, at the small high schools constructed pursuant to subdivision (c) of Section 17072.10, as it read on January 1, 2005, and on the reasons school districts do not currently opt to build small high schools.

(c) The evaluations required pursuant to subdivisions (a) and (b) shall be completed no later than two years after the opening of the last small high school constructed pursuant to subdivision (c) of Section 17072.10, as it read on January 1, 2005.

(d) The evaluations conducted pursuant to subdivisions (a) and (b) shall be used to inform the direction of future school facilities construction and related bond measures.

SEC. 4. Section 17072.10 of the Education Code is amended to read:

17072.10. (a) The board shall determine the applicant's maximum total new construction grant eligibility by multiplying the number of unhoused pupils calculated pursuant to Article 3 (commencing with Section 17071.75) in each school district with an approved application for new construction, by the per-unhoused-pupil grant as follows:

(1) Five thousand two hundred dollars ($5,200) for elementary school pupils.

(2) Five thousand five hundred dollars ($5,500) for middle school pupils.

(3) Seven thousand two hundred dollars ($7,200) for high school pupils.

(b) The board shall annually adjust the per-unhoused-pupil apportionment to reflect construction cost changes, as set forth in the statewide cost index for class B construction as determined by the board.

(c) (1) Commencing January 1, 2006, notwithstanding subdivisions (a) and (b), for a small high school, the maximum total new construction grant shall be adjusted to reflect 120 percent of the amounts determined pursuant to subdivisions (a) and (b). The board shall adopt regulations, in consultation with the Superintendent of Public Instruction, to establish criteria to ensure that this adjustment is available to multiple small high schools on a pilot program basis and only for those applicant school districts that propose to build a small high school as part of an academic reform strategy that focuses on the positive outcomes that small high schools encourage. The board shall set aside a total amount of twenty million dollars ($20,000,000) for this purpose from the proceeds of state bonds approved by the voters pursuant to the Kindergarten-University Public Education Facilities Bond Act of 2002 (Part 68.1 (commencing with Section 100600)) and the Kindergarten-University Public Education Facilities Bond Act of 2004 (Part 68.2 (commencing with Section 100800)). The board shall also adopt regulations, in consultation with the Superintendent of Public Instruction, to implement the pilot program, including, but not limited to, allowing a sufficient filing period for applications in order to ensure that the pilot program encompasses school districts from the northern, southern, and central regions of the state and from urban, suburban, and rural areas so that the pilot program participants are broadly representative of the state.

(2) Paragraph (1) does not apply in those circumstances where a small high school would otherwise have been built because of sparse population in the geographical area.

(d) The board may adopt regulations to be effective until July 1, 2000, that adjust the amounts identified in this section for qualifying individuals with exceptional needs, as defined in Section 56026. The regulations shall be amended after July 1, 2000, in consideration of the recommendations provided pursuant to Section 17072.15.

(e) The board may establish a single supplemental per-unhoused-pupil grant in addition to the amounts specified in subdivision (a) based on the statewide average marginal difference in costs in instances where a project requires multilevel school facilities

due to limited acreage. The district's application shall demonstrate that a practical alternative site is not available.

(f) For a school district having an enrollment of 2,500 or less for the prior fiscal year, the board may approve a supplemental apportionment of up to seven thousand five hundred dollars ($7,500) for any new construction project assistance. The amount of the supplemental apportionment authorized pursuant to this subdivision shall be adjusted in 2001 and every year thereafter by an amount equal to the percentage adjustment for class B construction.

(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. 5. Section 17072.10 is added to the Education Code, to read:

17072.10. (a) The board shall determine the applicant's maximum total new construction grant eligibility by multiplying the number of unhoused pupils calculated pursuant to Article 3 (commencing with Section 17071.75) in each school district with an approved application for new construction, by the per-unhoused-pupil grant as follows:

(1) Five thousand two hundred dollars ($5,200) for elementary school pupils.

(2) Five thousand five hundred dollars ($5,500) for middle school pupils.

(3) Seven thousand two hundred dollars ($7,200) for high school pupils.

(b) The board shall annually adjust the per-unhoused-pupil apportionment to reflect construction cost changes, as set forth in the statewide cost index for class B construction as determined by the board.

(c) Any regulations adopted by the board prior to July 1, 2000, that adjust the amounts identified in this section for qualifying individuals with exceptional needs, as defined in Section 56026, as amended after July 1, 2000, in consideration of the recommendations provided pursuant to Section 17072.15, shall continue in effect.

(d) The board may establish a single supplemental per-unhoused-pupil grant in addition to the amounts specified in subdivision (a) based on the statewide average marginal difference in costs in instances where a project requires multilevel school facilities due to limited acreage. The district's application shall demonstrate that a practical alternative site is not available.

(e) For a school district having an enrollment of 2,500 or less for the prior fiscal year, the board may approve a supplemental apportionment of up to seven thousand five hundred dollars ($7,500) for any new construction project assistance. The amount of the supplemental apportionment authorized pursuant to this subdivision shall be adjusted

in 2008 and every year thereafter by an amount equal to the percentage adjustment for class B construction.

(f) This section is operative January 1, 2008.

SEC. 6. Section 17072.30 of the Education Code is amended to read:

17072.30. (a) Subject to the availability of funds, and to the determination of priority pursuant to Section 17072.25, if applicable, the board shall apportion funds to an eligible school district only upon the approval of the project by the Department of General Services pursuant to the Field Act, as defined in Section 17281, and certification by the school district that the required 50 percent matching funds from local sources have been expended by the district for the project, or have been deposited in the county fund, or will be expended by the district by the time the project is completed, in an amount at least equal to the proposed apportionment pursuant to this chapter, prior to release of the state funds.

(b) Notwithstanding subdivision (a), subject to the availability of funds, the board shall, for a project to construct a small high school pursuant to subdivision (c) of Section 17072.10, apportion funds to an eligible school district only upon approval of the project by the Department of General Services pursuant to the Field Act, as defined in Section 17281, and certification by the school district that the required 40 percent matching funds from local sources have been expended by the district for the project, or have been deposited in the county fund, or will be expended by the district by the time the project is completed, in an amount at least equal to 40 percent of the total project costs pursuant to this chapter, prior to release of the state funds.

(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. 7. Section 17072.30 is added to the Education Code, to read:

17072.30. (a) Subject to the availability of funds, and to the determination of priority pursuant to Section 17072.25, if applicable, the board shall apportion funds to an eligible school district only upon the approval of the project by the Department of General Services pursuant to the Field Act, as defined in Section 17281, and certification by the school district that the required 50 percent matching funds from local sources have been expended by the district for the project, or have been deposited in the county fund, or will be expended by the district by the time the project is completed, in an amount at least equal to the proposed apportionment pursuant to this chapter, prior to release of the state funds.

(b) This section is operative January 1, 2008.

SEC. 8. Section 17072.32 of the Education Code is amended to read:

17072.32. (a) For any project that has received an apportionment pursuant to subdivision (a) of Section 17072.30, funding shall be released in amounts equal to the amount of the local match upon certification by the school district that the school district has entered into a binding contract for completion of the approved project.

(b) Notwithstanding subdivision (a), for any project for construction of a small high school, pursuant to subdivision (c) of Section 17072.10, that has received an apportionment pursuant to subdivision (b) of Section 17072.30, funding shall be released in amounts equal to 60 percent of the total project costs upon certification by the school district that the school district has entered into a binding contract for completion of the approved project.

(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. 9. Section 17072.32 is added to the Education Code, to read:

17072.32. (a) For any project that has received an apportionment pursuant to Section 17072.30, funding shall be released in amounts equal to the amount of the local match upon certification by the school district that the school district has entered into a binding contract for completion of the approved project.

(b) This section is operative January 1, 2008.

SEC. 10. Section 17074.32 is added to the Education Code, to read:

17074.32. (a) A high school with an enrollment of 1,000 or more pupils that is seeking to reconfigure into two or more small high schools, as defined in subdivision (m) of Section 17070.15, shall be eligible for additional modernization funding to assist with costs generated by the reconfiguration. Reconfiguration can specifically allow some limited new construction necessary to accommodate the reconfiguration. The board shall set aside a total amount of five million dollars ($5,000,000), from the proceeds of state bonds approved by the voters pursuant to the Kindergarten-University Public Education Facilities Bond Act of 2002 (Part 68.1 (commencing with Section 100600)) and the Kindergarten-University Public Education Facilities Bond Act of 2004 (Part 68.2 (commencing with Section 100800)), for purposes of this additional modernization funding and no single project shall be granted, in the aggregate, more than five hundred thousand dollars ($500,000).

(b) The board shall adopt regulations to implement this section.

(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.

CHAPTER 895

An act to amend Sections 32282, 33540, 35295, 35296, 42140, 48900.1, and 48910 of, and to repeal Sections 38132, 48211, 48214, and 51230 of, the Education Code, to amend Sections 6550 and 6552 of the Family Code, to amend Section 17556 of the Government Code, and to amend Sections 124100 and 124105 of the Health and Safety Code, relating to education.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 2004.]

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

SECTION 1. Section 32282 of the Education Code is amended to read:

32282. (a) The comprehensive school safety plan shall include, but not be limited to, both of the following:

(1) Assessing the current status of school crime committed on school campuses and at school-related functions.

(2) Identifying appropriate strategies and programs that will provide or maintain a high level of school safety and address the school's procedures for complying with existing laws related to school safety, which shall include the development of all of the following:

(A) Child abuse reporting procedures consistent with Article 2.5 (commencing with Section 11164) of Title 1 of Part 4 of the Penal Code.

(B) Disaster procedures, routine and emergency, including adaptations for pupils with disabilities in accordance with the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.). The disaster procedures shall also include, but not be limited to, both of the following:

(i) Establishing an earthquake emergency procedure system in every public school building having an occupant capacity of 50 or more pupils or more than one classroom. A district or county office may work with the Office of Emergency Services and the Seismic Safety Commission to develop and establish the earthquake emergency procedure system. The system shall include, but not be limited to, all of the following:

(I) A school building disaster plan, ready for implementation at any time, for maintaining the safety and care of pupils and staff.

(II) A drop procedure whereby each pupil and staff member takes cover under a table or desk, dropping to his or her knees, with the head protected by the arms, and the back to the windows. A drop procedure practice shall be held at least once each school quarter in elementary schools and at least once a semester in secondary schools.

(III) Protective measures to be taken before, during, and following an earthquake.

(IV) A program to ensure that pupils and both the certificated and classified staff are aware of, and properly trained in, the earthquake emergency procedure system.

(ii) Establishing a procedure to allow a public agency, including the American Red Cross, to use school buildings, grounds, and equipment for mass care and welfare shelters during disasters or other emergencies affecting the public health and welfare. The district or county office shall cooperate with the public agency in furnishing and maintaining the services as the district or county office may deem necessary to meet the needs of the community.

(C) Policies pursuant to subdivision (d) of Section 48915 for pupils who committed an act listed in subdivision (c) of Section 48915 and other school-designated serious acts which would lead to suspension, expulsion, or mandatory expulsion recommendations pursuant to Article 1 (commencing with Section 48900) of Chapter 6 of Part 27.

(D) Procedures to notify teachers of dangerous pupils pursuant to Section 49079.

(E) A discrimination and harassment policy consistent with the prohibition against discrimination contained in Chapter 2 (commencing with Section 200) of Part 1.

(F) The provisions of any schoolwide dress code, pursuant to Section 35183, that prohibits pupils from wearing ''gang-related apparel,'' if the school has adopted that type of a dress code. For those purposes, the comprehensive school safety plan shall define ''gang-related apparel.'' The definition shall be limited to apparel that, if worn or displayed on a school campus, reasonably could be determined to threaten the health and safety of the school environment. Any schoolwide dress code established pursuant to this section and Section 35183 shall be enforced on the school campus and at any school-sponsored activity by the principal of the school or the person designated by the principal. For the purposes of this paragraph, ''gang-related apparel'' shall not be considered a protected form of speech pursuant to Section 48950.

(G) Procedures for safe ingress and egress of pupils, parents, and school employees to and from school.

(H) A safe and orderly environment conducive to learning at the school.

(I) The rules and procedures on school discipline adopted pursuant to Sections 35291 and 35291.5.

(J) Hate crime reporting procedures pursuant to Chapter 1.2 (commencing with Section 628) of Title 15 of Part 1 of the Penal Code.

(b) It is the intent of the Legislature that schools develop comprehensive school safety plans using existing resources, including

the materials and services of the partnership, pursuant to this chapter. It is also the intent of the Legislature that schools use the handbook developed and distributed by the School/Law Enforcement Partnership Program entitled ''Safe Schools: A Planning Guide for Action'' in conjunction with developing their plan for school safety.

(c) Grants to assist schools in implementing their comprehensive school safety plan shall be made available through the partnership as authorized by Section 32285.

(d) Each schoolsite council or school safety planning committee in developing and updating a comprehensive school safety plan shall, where practical, consult, cooperate, and coordinate with other schoolsite councils or school safety planning committees.

(e) The comprehensive school safety plan may be evaluated and amended, as needed, by the school safety planning committee, but shall be evaluated at least once a year, to ensure that the comprehensive school safety plan is properly implemented. An updated file of all safety-related plans and materials shall be readily available for inspection by the public.

(f) The comprehensive school safety plan, as written and updated by the schoolsite council or school safety planning committee, shall be submitted for approval under subdivision (a) of Section 32288.

SEC. 2. Section 33540 of the Education Code is amended to read:

33540. (a) The State Board of Education and the department shall request that the commission review and revise, as necessary, the course requirements in the history-social science framework to ensure that minimum standards for courses in American government and civics include sufficient attention to teaching pupils how to interact, in a practical manner, with state and local governmental agencies and representatives to solve problems and to petition for changes in laws and procedures.

(b) When the history-social science framework is revised as required by law, the commission shall ensure that the following historical documents are incorporated into the framework, as appropriate:

(1) The Declaration of Independence.

(2) The United States Constitution, including the Bill of Rights.

(3) The Federalist Papers.

(4) The Emancipation Proclamation.

(5) The Gettysburg Address.

(6) George Washington's Farewell Address.

(c) If any portion of the California Standards Tests related to instruction in American government and civics is revised, the State Board of Education and the Superintendent of Public Instruction shall ensure that an appropriate number of questions on the tests relate to the historical documents listed in subdivision (b).

SEC. 3. Section 35295 of the Education Code is amended to read:

35295. The Legislature finds and declares the following:

(a) Because of the generally acknowledged fact that California will experience moderate to severe earthquakes in the foreseeable future, increased efforts to reduce earthquake hazards should be encouraged and supported.

(b) In order to minimize loss of life and disruption, it is necessary for all private elementary schools and high schools to develop school disaster plans and specifically an earthquake emergency procedure system so that pupils and staff will act instinctively and correctly when an earthquake disaster strikes.

(c) It is therefore the intent of the Legislature in enacting this article to authorize the establishment of earthquake emergency procedure systems in kindergarten and grades 1 through 12 in all private schools in California.

SEC. 4. Section 35296 of the Education Code is amended to read:

35296. The governing board of each private school shall establish an earthquake emergency procedure system in every private school building under its jurisdiction having an occupant capacity of 50 or more pupils or more than one classroom. A governing board may work with the Office of Emergency Services and the Seismic Safety Commission to develop and establish the earthquake emergency procedure systems.

SEC. 5. Section 38132 of the Education Code is repealed.

SEC. 6. Section 42140 of the Education Code is amended to read:

42140. (a) If a school district or county office of education, either individually or as a member of a joint powers agency, provides health and welfare benefits for employees upon their retirement, and those benefits will continue after the employees reach 65 years of age, the superintendent of the school district or county superintendent of schools, as appropriate, annually shall provide information to the governing board of the school district or the county board of education, as appropriate, regarding the estimated accrued but unfunded cost of those benefits. The estimate of cost shall be based upon an actuarial report that incorporates annual fiscal information and is obtained by the superintendent at least every three years. The actuarial report shall be performed by an actuary who is a member of the American Academy of Actuaries. If the school district or county office of education regularly contracts for an actuarial report for other fiscal matters, a separate actuarial report is not required, if the estimate of costs required by this subdivision is separately and clearly set forth in that report.

(b) The cost information required by subdivision (a) and a copy of the actuarial report on which the estimated costs are based shall be presented by the superintendent at a public meeting of the governing board. At that meeting, the governing board shall disclose, as a separate agenda item,

whether or not it will reserve a sufficient amount of money in its budget to fund the present value of the health and welfare benefits of existing retirees or the future cost of employees who are eligible for benefits in the current fiscal year, or both.

(c) The governing board annually shall certify to the county superintendent of schools the amount of money, if any, that it has decided to reserve in its budget for the cost of those benefits, and shall submit to the county superintendent of schools any budget revisions that may be necessary to account for that budget reserve.

(d) The county board of education annually shall certify to the Superintendent of Public Instruction the amount of money, if any, that has been reserved in the budget of the county office of education for the cost of those benefits.

(e) This section is inoperative on January 1, 2005.

SEC. 7. Section 48211 of the Education Code is repealed.

SEC. 8. Section 48214 of the Education Code is repealed.

SEC. 9. Section 48900.1 of the Education Code is amended to read:

48900.1. (a) The governing board of each school district may adopt a policy authorizing teachers to require the parent or guardian of a pupil who has been suspended by a teacher pursuant to Section 48910 for reasons specified in subdivision (i) or (k) of Section 48900, to attend a portion of a schoolday in the classroom of his or her child or ward. The policy shall take into account reasonable factors that may prevent compliance with a notice to attend. The attendance of the parent or guardian shall be limited to the class from which the pupil was suspended.

(b) The policy shall be adopted pursuant to the procedures set forth in Sections 35291 and 35291.5. Parents and guardians shall be notified of this policy prior to its implementation. A teacher shall apply any policy adopted pursuant to this section uniformly to all pupils within the classroom.

The adopted policy shall include the procedures that the district will follow to accomplish the following:

(1) Ensure that parents or guardians who attend school for the purposes of this section meet with the school administrator or his or her designee after completing the classroom visitation and before leaving the schoolsite.

(2) Contact parents or guardians who do not respond to the request to attend school pursuant to this section.

(c) If a teacher imposes the procedure pursuant to subdivision (a), the principal shall send a written notice to the parent or guardian stating that attendance by the parent or guardian is pursuant to law. This section shall apply only to a parent or guardian who is actually living with the pupil.

(d) A parent or guardian who has received a written notice pursuant to subdivision (c) shall attend class as specified in the written notice. The notice may specify that the attendance of the parent or guardian be on the day the pupil is scheduled to return to class, or within a reasonable period of time thereafter, as established by the policy of the board adopted pursuant to subdivision (a).

SEC. 10. Section 48910 of the Education Code is amended to read:

48910. (a) A teacher may suspend any pupil from class, for any of the acts enumerated in Section 48900, for the day of the suspension and the day following. The teacher shall immediately report the suspension to the principal of the school and send the pupil to the principal or the designee of the principal for appropriate action. If that action requires the continued presence of the pupil at the schoolsite, the pupil shall be under appropriate supervision, as defined in policies and related regulations adopted by the governing board of the school district. As soon as possible, the teacher shall ask the parent or guardian of the pupil to attend a parent-teacher conference regarding the suspension. If practicable, a school counselor or a school psychologist may attend the conference. A school administrator shall attend the conference if the teacher or the parent or guardian so requests. The pupil shall not be returned to the class from which he or she was suspended, during the period of the suspension, without the concurrence of the teacher of the class and the principal.

(b) A pupil suspended from a class shall not be placed in another regular class during the period of suspension. However, if the pupil is assigned to more than one class per day this subdivision shall apply only to other regular classes scheduled at the same time as the class from which the pupil was suspended.

(c) A teacher may also refer a pupil, for any of the acts enumerated in Section 48900, to the principal or the designee of the principal for consideration of a suspension from the school.

SEC. 11. Section 51230 of the Education Code is repealed.

SEC. 12. Section 6550 of the Family Code is amended to read:

6550. (a) A caregiver's authorization affidavit that meets the requirements of this part authorizes a caregiver 18 years of age or older who completes items 1 to 4, inclusive, of the affidavit provided in Section 6552 and signs the affidavit to enroll a minor in school and consent to school-related medical care on behalf of the minor. A caregiver who is a relative and who completes items 1 to 8, inclusive, of the affidavit provided in Section 6552 and signs the affidavit shall have the same rights to authorize medical care and dental care for the minor that are given to guardians under Section 2353 of the Probate Code. The medical care authorized by this caregiver who is a relative may include

mental health treatment subject to the limitations of Section 2356 of the Probate Code.

(b) The decision of a caregiver to consent to or to refuse medical or dental care for a minor shall be superseded by any contravening decision of the parent or other person having legal custody of the minor, provided the decision of the parent or other person having legal custody of the minor does not jeopardize the life, health, or safety of the minor.

(c) A person who acts in good faith reliance on a caregiver's authorization affidavit to provide medical or dental care, without actual knowledge of facts contrary to those stated on the affidavit, is not subject to criminal liability or to civil liability to any person, and is not subject to professional disciplinary action, for that reliance if the applicable portions of the affidavit are completed. This subdivision applies even if medical or dental care is provided to a minor in contravention of the wishes of the parent or other person having legal custody of the minor as long as the person providing the medical or dental care has no actual knowledge of the wishes of the parent or other person having legal custody of the minor.

(d) A person who relies on the affidavit has no obligation to make any further inquiry or investigation.

(e) Nothing in this section relieves any individual from liability for violations of other provisions of law.

(f) If the minor stops living with the caregiver, the caregiver shall notify any school, health care provider, or health care service plan that has been given the affidavit. The affidavit is invalid after the school, health care provider, or health care service plan receives notice that the minor is no longer living with the caregiver.

(g) A caregiver's authorization affidavit shall be invalid, unless it substantially contains, in not less than 10-point boldface type or a reasonable equivalent thereof, the warning statement beginning with the word ''warning'' specified in Section 6552. The warning statement shall be enclosed in a box with 3-point rule lines.

(h) For purposes of this part, the following terms have the following meanings:

(1) ''Person'' includes an individual, corporation, partnership, association, the state, or any city, county, city and county, or other public entity or governmental subdivision or agency, or any other legal entity.

(2) ''Relative'' means a spouse, parent, stepparent, brother, sister, stepbrother, stepsister, half brother, half sister, uncle, aunt, niece, nephew, first cousin, or any person denoted by the prefix ''grand'' or ''great,'' or the spouse of any of the persons specified in this definition, even after the marriage has been terminated by death or dissolution.

(3) ''School-related medical care'' means medical care that is required by state or local governmental authority as a condition for

school enrollment, including immunizations, physical examinations, and medical examinations conducted in schools for pupils.

SEC. 13. Section 6552 of the Family Code is amended to read:

6552. The caregiver's authorization affidavit shall be in substantially the following form:

Caregiver's Authorization Affidavit

Use of this affidavit is authorized by Part 1.5 (commencing with Section 6550) of Division 11 of the California Family Code.

Instructions: Completion of items 1–4 and the signing of the affidavit is sufficient to authorize enrollment of a minor in school and authorize school-related medical care. Completion of items 5–8 is additionally required to authorize any other medical care. Print clearly.

The minor named below lives in my home and I am 18 years of age or older.

1. Name of minor: _____.

2. Minor's birth date: _____.

3. My name (adult giving authorization): _____.

4. My home address: _____
_____.

_____

5. ☐ I am a grandparent, aunt, uncle, or other qualified relative of the minor (see back of this form for a definition of ''qualified relative'').

6. Check one or both (for example, if one parent was advised and the other cannot be located):

☐ I have advised the parent(s) or other person(s) having legal custody of the minor of my intent to authorize medical care, and have received no objection.

☐ I am unable to contact the parent(s) or other person(s) having legal custody of the minor at this time, to notify them of my intended authorization.

7. My date of birth: _____.

8. My California driver's license or identification card number: _____.

Warning: Do not sign this form if any of the statements above are incorrect, or you will be committing a crime punishable by a fine, imprisonment, or both.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
Dated: _____ Signed: _____

Notices:

1. This declaration does not affect the rights of the minor's parents or legal guardian regarding the care, custody, and control of the minor, and does not mean that the caregiver has legal custody of the minor.

2. A person who relies on this affidavit has no obligation to make any further inquiry or investigation.

Additional Information:

TO CAREGIVERS:

1. "Qualified relative," for purposes of item 5, means a spouse, parent, stepparent, brother, sister, stepbrother, stepsister, half brother, half sister, uncle, aunt, niece, nephew, first cousin, or any person denoted by the prefix "grand" or "great," or the spouse of any of the persons specified in this definition, even after the marriage has been terminated by death or dissolution.

2. The law may require you, if you are not a relative or a currently licensed foster parent, to obtain a foster home license in order to care for a minor. If you have any questions, please contact your local department of social services.

3. If the minor stops living with you, you are required to notify any school, health care provider, or health care service plan to which you have given this affidavit. The affidavit is invalid after the school, health care provider, or health care service plan receives notice that the minor no longer lives with you.

4. If you do not have the information requested in item 8 (California driver's license or I.D.), provide another form of identification such as your social security number or Medi-Cal number.

TO SCHOOL OFFICIALS:

1. Section 48204 of the Education Code provides that this affidavit constitutes a sufficient basis for a determination of residency of the minor, without the requirement of a guardianship or other custody order, unless the school district determines from actual facts that the minor is not living with the caregiver.

2. The school district may require additional reasonable evidence that the caregiver lives at the address provided in item 4.

TO HEALTH CARE PROVIDERS AND HEALTH CARE SERVICE PLANS:

1. A person who acts in good faith reliance upon a caregiver's authorization affidavit to provide medical or dental care, without actual knowledge of facts contrary to those stated on the affidavit, is not subject to criminal liability or to civil liability to any person, and is not subject to professional disciplinary action, for that reliance if the applicable portions of the form are completed.

2. This affidavit does not confer dependency for health care coverage purposes.

SEC. 14. Section 17556 of the Government Code is amended to read:

17556. The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

(a) The claim is submitted by a local agency or school district that requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district that requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.

(b) The statute or executive order affirmed for the state a mandate that had been declared existing law or regulation by action of the courts.

(c) The statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation. This subdivision applies regardless of whether the federal law or regulation was enacted or adopted prior to or after the date on which the state statute or executive order was enacted or issued.

(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

(e) The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

(f) The statute or executive order imposed duties that were expressly included in a ballot measure approved by the voters in a statewide or local election.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

SEC. 15. Section 124100 of the Health and Safety Code is amended to read:

124100. (a) In cooperation with the county child health and disability prevention program, the governing body of every school district or private school that has children enrolled in kindergarten shall provide information to the parents or guardians of all children enrolled in kindergarten of this article and Section 120475.

(b) Each county child health and disability prevention program shall reimburse school districts for information provided pursuant to this section. The Superintendent of Public Instruction may withhold state average daily attendance funds to any school district for any child for whom a certification or parental waiver is not obtained as required by Section 124085.

SEC. 16. Section 124105 of the Health and Safety Code is amended to read:

124105. (a) This section shall be known and may be cited as the ''Hughes Children's Health Enforcement Act.''

(b) The Legislature recognizes the importance of health to learning and to a successful academic career. The Legislature also recognizes the important role of schools in ensuring the health of pupils through health education and the maintenance of minimal health standards among the pupil population. Therefore, it is the intent of the Legislature that schools ensure that pupils receive a health screening before the end of the first grade.

(c) The governing board of each school district shall exclude from school, for not more than five days, any first grade pupil who has not provided either a certificate or a waiver, as specified in Section 124085, on or before the 90th day after the pupil's entrance into the first grade. The exclusion shall commence with the 91st calendar day after the pupil's entrance into the first grade, unless school is not in session that day, then the exclusion shall commence on the next succeeding schoolday. A child shall not be excluded under this section if the pupil's parent or guardian provides to the district either a certificate or a waiver as specified in Section 124085.

(d) The governing board of a school district may exempt any pupil from the exclusion described in subdivision (c) if, at least twice between the first day and the 90th day after the pupil's entrance into the first grade, the district has contacted the pupil's parent or guardian and the parent or guardian refuses to provide either a certificate or a waiver as specified in Section 124085. The number of exemptions from exclusion granted by a school district pursuant to this subdivision may not exceed 5 percent of a school district's first grade enrollment. It is the intent of the Legislature that exemptions from exclusion be used in extraordinary circumstances, including, but not limited to, family situations of great dysfunction or disruption, including substance abuse by parents or guardians, child abuse, or child neglect.

(e) It is the intent of the Legislature that, upon a pupil's enrollment in kindergarten or first grade, the governing board of the school district notify the pupil's parent or guardian of the obligation to comply with Section 124085 and of the availability for low-income children of free

health screening for up to 18 months prior to entry into first grade through the Child Health Disabilities Prevention Program.

(f) It is the intent of the Legislature that school districts provide information to parents regarding the requirements of Section 124085 within the notification of immunization requirements. Moreover, the Legislature intends that the information sent to parents encourage parents to obtain health screenings simultaneously with immunizations.

SEC. 17. Notwithstanding any other law, for purposes of calculating the amount of the state reimbursement pursuant to Section 6 of Article XIII B of the California Constitution for the state-mandated local program imposed by increasing the science course requirement for graduation from one science course to two science courses (Sec. 94, Ch. 498, Stats. 1983), if the school district or county office submits a valid reimbursement claim for a new science facility, the reimbursement shall be reduced by the amount of state bond funds, if any, received by the school district or county office to construct the new science facility.

SEC. 18. Notwithstanding any other law, the Commission on State Mandates shall, on or before December 31, 2005, reconsider its decision in 97-TC-21, relating to the School Accountability Report Card 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 1463 of the Statutes of 1989.
(b) Chapter 759 of the Statutes of 1992.
(c) Chapter 1031 of the Statutes of 1993.
(d) Chapter 824 of the Statutes of 1994.
(e) Chapter 918 of the Statutes of 1997.

SEC. 19. 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 722 of the Statutes of 2001.
(d) Chapter 576 of the Statutes of 2000.

CHAPTER 896

An act to amend Sections 1240.1, 1240.2, 1625, 7004, 7007, 8201, 8208, 8223, 8257, 8263.1, 8450, 8825, 33540, 41020.5, 41326, 41326.1, 41344, 42120, 42127.6, 42129, 42131, 42133.5, 46200.5, 46201.5, 47632, 47646, 48293, 49110, 51101, 51101.1, 51224.5, 51747, 52515, 52616.18, 56027, 56028, 56140, 56195, 56195.1, 56361, 56364.1, 56836.01, 56836.03, 56836.155, 56836.173, and 68081 of, to amend the heading of Article 14 (commencing with Section 8285) of Chapter 2 of Part 6 of, to amend and renumber Sections 8285.1, 8287, 8288, 8289, 8290, 8290.1, 8290.2, 8300, and 35294.95 of, to add Sections 95, 51240, and 56028.5 to, to repeal Sections 8206.3, 8207, 8242, 8285, 8285.5, and 56364.5 of, and to repeal Article 4 (commencing with Section 48700) of Chapter 4 of Part 27 of, the Education Code, to amend Sections 7579.1 and 53260 of the Government Code, to amend Section 44 of Chapter 227 of the Statutes of 2003, and to amend Item 6110-104-0001 of Section 2.00 of Chapter 208 of the Statutes of 2004, relating to education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 2004.]

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

SECTION 1. Section 95 is added to the Education Code, to read:

95. ''Superintendent'' or ''superintendent'' whenever used in this code means the Superintendent of Public Instruction, unless the context requires otherwise.

SEC. 2. Section 1240.1 of the Education Code is amended to read:

1240.1. If a county superintendent of schools transmits to the Controller and the Superintendent of Public Instruction a qualified or negative certification as required by subdivision (*l*) of Section 1240, the department, in cooperation with the Controller's office, shall review the certification and the attached report and any other pertinent information, and the Superintendent of Public Instruction shall exercise his or her authority pursuant to Section 1630.

SEC. 3. Section 1240.2 of the Education Code is amended to read:

1240.2. A county superintendent of schools who files a qualified or negative certification for the second report required pursuant to subdivision (*l*) of Section 1240 and a county office of education that is classified as qualified or negative by the Superintendent of Public Instruction shall provide to the Superintendent of Public Instruction and the Controller, no later than June 1, a financial statement that covers the financial and budgetary status of the county office of education for the

period ending April 30 and projects the fund and cash balances of the county office of education as of June 30.

SEC. 4. Section 1625 of the Education Code is amended to read:

1625. The county superintendent of schools for any county office of education that reports a negative unrestricted fund balance or a negative cash balance in the annual report required by Section 1622 or in the audited annual financial statements required by Section 41020 shall include, with the budget submitted in accordance with Section 1622 and the certifications required by subdivision (*l*) of Section 1240, a statement identifying the reasons for the negative unrestricted fund balance or negative cash balance and the steps that will be taken to ensure that the negative balance will not occur at the end of the budget year.

SEC. 5. Section 7004 of the Education Code is amended to read:

7004. As used in this article:

(a) ''Certificated employee'' means a member, as defined by Section 22146, of the State Teachers' Retirement System.

(b) ''School district'' means that district from which the member of the State Teachers' Retirement System last made contributions to the system before retirement.

(c) ''Spouse'' means a spouse as defined by Section 22171.

SEC. 6. Section 7007 of the Education Code is amended to read:

7007. (a) Any qualified organization, as defined in subdivision (b), in cooperation with the Public Employees' Retirement System, may develop a health benefits plan which would be available to persons who are members of those organizations, with equal premiums for both active and retired teachers. The plan would be available, on an optional basis, to each school district, county board of education, and a county superintendent of schools which becomes a contracting agency with the Public Employees' Retirement System pursuant to Section 22857 of the Government Code.

(b) ''Qualified organization'' means an exclusive representative of the certificated or classified employees, as defined by Section 3540.1 of the Government Code, or any organization with a membership of at least 1,000 members who are retirees of the State Teachers' Retirement System, or any organization with a membership of at least 1,000 members who are faculty members in the California Community Colleges.

(c) This section shall not apply to any contracting agency unless and until the agency elects to be subject to this section pursuant to Section 22857 of the Government Code.

SEC. 7. Section 8206.3 of the Education Code is repealed.

SEC. 8. Section 8201 of the Education Code is amended to read:

8201. The purpose of this chapter is as follows:

(a) To provide a comprehensive, coordinated, and cost-effective system of child care and development services for children to age 13 and their parents, including a full range of supervision, health, and support services through full- and part-time programs.

(b) To encourage community-level coordination in support of child care and development services.

(c) To provide an environment that is healthy and nurturing for all children in child care and development programs.

(d) To provide the opportunity for positive parenting to take place through understanding of human growth and development.

(e) To reduce strain between parent and child in order to prevent abuse, neglect, or exploitation.

(f) To enhance the cognitive development of children, with particular emphasis upon those children who require special assistance, including bilingual capabilities to attain their full potential.

(g) To establish a framework for the expansion of child care and development services.

(h) To empower and encourage parents and families of children who require child care services to take responsibility to review the safety of the child care program or facility and to evaluate the ability of the program or facility to meet the needs of the child.

SEC. 9. Section 8207 of the Education Code is repealed.

SEC. 10. Section 8208 of the Education Code is amended to read:

8208. As used in this chapter:

(a) ''Alternative payments'' includes payments that are made by one child care agency to another agency or child care provider for the provision of child care and development services, and payments that are made by an agency to a parent for the parent's purchase of child care and development services.

(b) ''Alternative payment program'' means a local government agency or nonprofit organization that has contracted with the department pursuant to Section 8220.2 to provide alternative payments and to provide support services to parents and providers.

(c) ''Applicant or contracting agency'' means a school district, community college district, college or university, county superintendent of schools, county, city, public agency, private nontax-exempt agency, private tax-exempt agency, or other entity that is authorized to establish, maintain, or operate services pursuant to this chapter. Private agencies and parent cooperatives, duly licensed by law, shall receive the same consideration as any other authorized entity with no loss of parental decisionmaking prerogatives as consistent with the provisions of this chapter.

(d) ''Assigned reimbursement rate'' is that rate established by the contract with the agency and is derived by dividing the total dollar

amount of the contract by the minimum child day of average daily enrollment level of service required.

(e) ''Attendance'' means the number of children present at a child care and development facility. ''Attendance,'' for the purposes of reimbursement, includes excused absences by children because of illness, quarantine, illness or quarantine of their parent, family emergency, or to spend time with a parent or other relative as required by a court of law or that is clearly in the best interest of the child.

(f) ''Capital outlay'' means the amount paid for the renovation and repair of child care and development facilities to comply with state and local health and safety standards, and the amount paid for the state purchase of relocatable child care and development facilities for lease to qualifying contracting agencies.

(g) ''Caregiver'' means a person who provides direct care, supervision, and guidance to children in a child care and development facility.

(h) ''Child care and development facility'' means any residence or building or part thereof in which child care and development services are provided.

(i) ''Child care and development programs'' means those programs that offer a full range of services for children from infancy to 13 years of age, for any part of a day, by a public or private agency, in centers and family child care homes. These programs include, but are not limited to, all of the following:

(1) Campus child care and development.

(2) General child care and development.

(3) Migrant child care and development.

(4) Child care provided by the California School Age Families Education Program (Article 7.1 (commencing with Section 54740) of Chapter 9 of Part 29).

(5) State preschool.

(6) Resource and referral.

(7) Child care and development services for children with special needs.

(8) Family child care home network.

(9) Alternative payment.

(10) Child abuse protection and prevention services.

(11) Schoolage community child care.

(j) ''Child care and development services'' means those services designed to meet a wide variety of needs of children and their families, while their parents or guardians are working, in training, seeking employment, incapacitated, or in need of respite. These services may include direct care and supervision, instructional activities, resource and referral programs, and alternative payment arrangements.

(k) ''Children at risk of abuse, neglect, or exploitation'' means children who are so identified in a written referral from a legal, medical, or social service agency, or emergency shelter.

(*l*) ''Children with exceptional needs'' means infants and toddlers, from birth to 36 months of age, inclusive, who have been determined eligible for early intervention services pursuant to the California Early Intervention Services Act (Title 14 (commencing with Section 95000) of the Government Code) and its implementing regulations, and children 3 years of age and older who have been determined to be eligible for special education and related services by an individualized education program team according to the special education requirements contained in Part 30 (commencing with Section 56000), and meeting eligibility criteria described in Section 56026 and Sections 56333 to 56338, inclusive, and Sections 3030 and 3031 of Title 5 of the California Code of Regulations. These children shall have an active individualized education program or individualized family service plan, and be receiving early intervention services or appropriate special education and services. These children, ages birth to 21 years, inclusive, may be autistic, developmentally disabled, hearing impaired, speech impaired, visually impaired, seriously emotionally disturbed, orthopedically impaired, otherwise health impaired, multihandicapped, or children with specific learning disabilities, who require the special attention of adults in a child care setting.

(m) ''Closedown costs'' means reimbursements for all approved activities associated with the closing of operations at the end of each growing season for migrant child development programs only.

(n) ''Cost'' includes, but is not limited to, expenditures that are related to the operation of child care and development programs. ''Cost'' may include a reasonable amount for state and local contributions to employee benefits, including approved retirement programs, agency administration, and any other reasonable program operational costs. ''Cost'' may also include amounts for licensable facilities in the community served by the program, including lease payments or depreciation, downpayments, and payments of principal and interest on loans incurred to acquire, rehabilitate, or construct licensable facilities, but these costs shall not exceed fair market rents existing in the community in which the facility is located. ''Reasonable and necessary costs'' are costs that, in nature and amount, do not exceed what an ordinary prudent person would incur in the conduct of a competitive business.

(o) ''Elementary school,'' as contained in Section 425 of Title 20 of the United States Code (the National Defense Education Act of 1958, Public Law 85-864, as amended), includes early childhood education programs and all child development programs, for the purpose of the

cancellation provisions of loans to students in institutions of higher learning.

(p) ''Health services'' include, but are not limited to, all of the following:

(1) Referral, whenever possible, to appropriate health care providers able to provide continuity of medical care.

(2) Health screening and health treatment, including a full range of immunization recorded on the appropriate state immunization form to the extent provided by the Medi-Cal Act (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code) and the Child Health and Disability Prevention Program (Article 6 (commencing with Section 124025) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code), but only to the extent that ongoing care cannot be obtained utilizing community resources.

(3) Health education and training for children, parents, staff, and providers.

(4) Followup treatment through referral to appropriate health care agencies or individual health care professionals.

(q) ''Higher educational institutions'' means the Regents of the University of California, the Trustees of the California State University, the Board of Governors of the California Community Colleges, and the governing bodies of any accredited private nonprofit institution of postsecondary education.

(r) ''Intergenerational staff'' means persons of various generations.

(s) ''Limited-English-speaking-proficient and non-English-speaking-proficient children'' means children who are unable to benefit fully from an English-only child care and development program as a result of either of the following:

(1) Having used a language other than English when they first began to speak.

(2) Having a language other than English predominantly or exclusively spoken at home.

(t) ''Parent'' means a biological parent, stepparent, adoptive parent, foster parent, caretaker relative, or any other adult living with a child who has responsibility for the care and welfare of the child.

(u) ''Program director'' means a person who, pursuant to Sections 8244 and 8360.1, is qualified to serve as a program director.

(v) ''Proprietary child care agency'' means an organization or facility providing child care, which is operated for profit.

(w) ''Resource and referral programs'' means programs that provide information to parents, including referrals and coordination of community resources for parents and public or private providers of care. Services frequently include, but are not limited to: technical assistance for providers, toy-lending libraries, equipment-lending libraries, toy-

and equipment-lending libraries, staff development programs, health and nutrition education, and referrals to social services.

(x) ''Severely disabled children'' are children with exceptional needs from birth to 21 years of age, inclusive, who require intensive instruction and training in programs serving pupils with the following profound disabilities: autism, blindness, deafness, severe orthopedic impairments, serious emotional disturbances, or severe mental retardation. ''Severely disabled children'' also include those individuals who would have been eligible for enrollment in a developmental center for handicapped pupils under Chapter 6 (commencing with Section 56800) of Part 30 as it read on January 1, 1980.

(y) ''Short-term respite child care'' means child care service to assist families whose children have been identified through written referral from a legal, medical, or social service agency, or emergency shelter as being neglected, abused, exploited, or homeless, or at risk of being neglected, abused, exploited, or homeless. Child care is provided for less than 24 hours per day in child care centers, treatment centers for abusive parents, family child care homes, or in the child's own home.

(z) (1) ''Site supervisor'' means a person who, regardless of his or her title, has operational program responsibility for a child care and development program at a single site. A site supervisor shall hold a permit issued by the Commission on Teacher Credentialing that authorizes supervision of a child care and development program operating in a single site. The Superintendent of Public Instruction may waive the requirements of this subdivision if the superintendent determines that the existence of compelling need is appropriately documented.

(2) In respect to state preschool programs, a site supervisor may qualify under any of the provisions in this subdivision, or may qualify by holding an administrative credential or an administrative services credential. A person who meets the qualifications of a site supervisor under both Section 8244 and subdivision (e) of Section 8360.1 is also qualified under this subdivision.

(aa) ''Standard reimbursement rate'' means that rate established by the Superintendent of Public Instruction pursuant to Section 8265.

(ab) ''Startup costs'' means those expenses an agency incurs in the process of opening a new or additional facility prior to the full enrollment of children.

(ac) ''State preschool services'' means part-day educational programs for low-income or otherwise disadvantaged prekindergarten-age children.

(ad) ''Support services'' means those services that, when combined with child care and development services, help promote the healthy physical, mental, social, and emotional growth of children. Support

services include, but are not limited to: protective services, parent training, provider and staff training, transportation, parent and child counseling, child development resource and referral services, and child placement counseling.

(ae) ''Teacher'' means a person with the appropriate permit issued by the Commission on Teacher Credentialing who provides program supervision and instruction that includes supervision of a number of aides, volunteers, and groups of children.

(af) ''Underserved area'' means a county or subcounty area, including, but not limited to, school districts, census tracts, or ZIP Code areas, where the ratio of publicly subsidized child care and development program services to the need for these services is low, as determined by the Superintendent of Public Instruction.

(ag) ''Workday'' means the time that the parent requires temporary care for a child for any of the following reasons:

(1) To undertake training in preparation for a job.

(2) To undertake or retain a job.

(3) To undertake other activities that are essential to maintaining or improving the social and economic function of the family, are beneficial to the community, or are required because of health problems in the family.

SEC. 11. Section 8223 of the Education Code is amended to read:

8223. The assigned reimbursement rate for alternative payment programs shall include the cost of child care paid to child care providers plus the administrative and support services costs of the alternative payment program. The total cost for administration and support services shall not exceed an amount equal to 23.4567 percent of the direct cost-of-care payments to child care providers. The administrative costs may not exceed the costs allowable for administration under federal requirements.

SEC. 12. Section 8242 of the Education Code is repealed.

SEC. 13. Section 8257 of the Education Code is amended to read:

8257. The department shall do all of the following in administering the provisions of this chapter:

(a) Apply sanctions against contracting agencies that have serious licensing violations, as defined and reported by the State Department of Social Services pursuant to Section 1544 of the Health and Safety Code.

(b) Provide 90 days' written notification to any contractor whose agreement is being terminated, except if there is imminent danger to the health and welfare of children if agency operation is not terminated more promptly. Notwithstanding Article 18 (commencing with Section 8400), the department shall establish procedures for placing a contractor whose agreement is being terminated into receivership. Action to initiate receivership shall be at the discretion of the department, and may be

taken against a contractor whose agreement is being terminated either immediately or within 90 days. The receiver shall not be a department employee. The receiver shall have sufficient experience in the administration of child care and development programs to ensure compliance with the terms of the receivership.

SEC. 14. Section 8263.1 of the Education Code is amended to read:

8263.1. For purposes of this chapter, ''income eligible'' means that a family's adjusted monthly income is at or below 75 percent of the state median income, adjusted for family size, and adjusted annually. 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 shall not be included as income for the purposes of determining eligibility for child care under this chapter.

SEC. 15. Section 8285 of the Education Code is repealed.

SEC. 16. Section 8285.1 of the Education Code is amended and renumbered to read:

8264.6. The Superintendent of Public Instruction may provide outreach services and technical assistance to new child care contracting agencies and to those providing child care during nontraditional times, in underserved geographic areas, and for children with special child care needs, including infants and toddlers under three years of age.

SEC. 17. Section 8285.5 of the Education Code is repealed.

SEC. 18. Section 8287 of the Education Code is amended and renumbered to read:

8264.7. The Superintendent of Public Instruction shall establish rules and regulations for the staffing of all center-based child care and development programs under contract with the department.

Priority shall be given by the department to the employment of persons in child development programs with ethnic backgrounds which are similar to those of the child for whom child development services are provided.

For purposes of staffing child care and development programs, the role of a teacher in child supervision means direct supervision of the children as well as supervision of aides and groups of children.

Family child care homes shall operate pursuant to adult/child ratios prescribed in Chapter 7 (commencing with Section 86001) of Division 6 of Title 22 of the California Code of Regulations.

Approval by the Superintendent of Public Instruction of any ongoing or new programs seeking to operate under the ratios and standards established by the Superintendent of Public Instruction under this chapter shall be based upon the following considerations:

(a) The type of facility in which care is being or is to be provided.

(b) The ability of the Superintendent of Public Instruction to implement a funding source change.

(c) The proportion of nonsubsidized children enrolled or to be enrolled by the agency.

(d) The most cost-effective ratios possible for the type of services provided or to be provided by the agency.

The Superintendent of Public Instruction shall apply for such waivers of federal requirements as are necessary to carry out this section.

SEC. 19. Section 8288 of the Education Code is amended and renumbered to read:

8264.8. Until the Superintendent of Public Instruction promulgates regulations for center-based programs establishing staffing ratios, the following staffing ratios shall apply:

(a) Infants, 0 to 2 years old—1:3 adult-child ratio, 1:18 teacher-child ratio.

(b) Infants and toddlers, 0 to 2 years old—1:4 adult-child ratio, 1:16 teacher-child ratio.

(c) Children 3 to 6 years old—1:8 adult-child ratio, 1:24 teacher-child ratio.

(d) Children 6 to 10 years old—1:14 adult-child ratio, 1:28 teacher-child ratio.

(e) Children 10 to 13 years old—1:18 adult-child ratio, 1:36 teacher-child ratio.

(f) If groups of children of varying ages are commingled, the teacher and adult ratios shall be proportionate and appropriate to the ages and groups of children.

SEC. 20. Section 8289 of the Education Code is amended and renumbered to read:

8279.3. (a) The department shall disburse augmentations to the base allocation for the expansion of child care and development programs to promote equal access to child development services across the state.

(b) The Superintendent of Public Instruction shall use the formula developed pursuant to subdivision (c) and the priorities identified by local child care and development planning councils, unless those priorities do not meet the requirements of state or federal law, as a guide in disbursing augmentations pursuant to subdivision (a).

(c) The Superintendent of Public Instruction shall develop a formula for prioritizing the disbursement of augmentations pursuant to this section. The formula shall give priority to allocating funds to underserved areas. The Superintendent of Public Instruction shall develop the formula by using the definition of ''underserved area'' in subdivision (af) of Section 8208 and direct impact indicators of need for

child care and development services in the county or subcounty areas. For purposes of this section, ''subcounty areas'' include, but are not limited to, school districts, census tracts, or ZIP Code areas that are deemed by the Superintendent of Public Instruction to be most appropriate to the type of program receiving an augmentation. Direct impact indicators of need may include, but are not limited to, the teenage pregnancy rate, the unemployment rate, area household income, or the number or percentage of families receiving public assistance, eligible for Medi-Cal, or eligible for free or reduced-price school meals, and any unique characteristics of the population served by the type of program receiving an augmentation.

(d) To promote equal access to services, the Superintendent of Public Instruction shall include in guidelines developed for use by local planning councils pursuant to subdivision (d) of Section 8499.5 guidance on identifying underserved areas and populations within counties. This guidance shall include reference to the direct impact indicators of need described in subdivision (c).

SEC. 21. Section 8290 of the Education Code is amended and renumbered to read:

8279.4. The Legislature finds and declares the following:

(a) There is a serious shortage of quality child day care facilities throughout the state.

(b) It is in the interest of the state's children and families, and the state's economic growth, to encourage the expansion of existing child day care facilities by assisting communities and interested government and private entities to finance child day care facilities.

(c) In addition to regional resource centers described in Provision 7(d) of Item 6110-196-0001 of the Budget Act of 1999, which focus on developing child care capacity in underserved areas of the state, there is a need to access capital for facilities on a systematic basis, especially to use limited public sector funds to leverage a greater private sector role in financing child day care facilities. The Legislature finds and declares that a financial intermediary could fill this role and support the regional resource centers and other local entities that work with potential providers by functioning as a centralized repository of training, best practices, and expertise on facilities financing.

SEC. 22. Section 8290.1 of the Education Code is amended and renumbered to read:

8279.5. (a) The Superintendent of Public Instruction shall contract with a nonprofit organization to serve as a financial intermediary. The nonprofit organization shall have staff who have expertise in financing and capital expansion, are knowledgeable about the child care field, and have the ability to develop and implement a plan to increase the

availability of financing to renovate, expand, and construct child day care facilities, both in day care centers and family day care homes.

(b) The financial intermediary selected by the Superintendent of Public Instruction shall undertake activities designed to increase funds available from the private and public sectors for the financing of child day care facilities. These activities shall include, but are not limited to, all of the following:

(1) Soliciting capital grants and program-related investments from foundations and corporations.

(2) Building partnerships with foundations and corporations.

(3) Developing lending commitments, linked deposits, and other financing programs with conventional financial institutions.

(4) Coordinating private sources of capital with existing public sector sources of financing for child day care facilities, including, but not limited to, the Department of Housing and Community Development and the California Infrastructure and Economic Development Bank.

(5) Coordinating financing efforts with the technical assistance provided by the regional resource centers described in Provision 7(d) of Item 6110-196-0001 of the Budget Act of 1999, and other local entities that work with potential providers.

(c) This section shall only be implemented to the extent that funds are appropriated for this purpose in the annual Budget Act.

SEC. 23. Section 8290.2 of the Education Code is amended and renumbered to read:

8279.6. (a) Pursuant to funding made available in subdivision (d) of Provision 7 of Item 6110-196-001 of the Budget Act of 2000, the Superintendent of Public Instruction shall contract for a financial intermediary, pursuant to Section 8290.1, by January 1, 2001.

(b) The financial intermediary, during its first six months of operation, shall do all of the following:

(1) Create and publicize an 800 technical assistance telephone service number.

(2) Provide financial development training for agencies at the local level including, but not limited to, Regional Resource Centers, Resource and Referral Agencies, and local child care planning councils that are assisting existing and potential providers renovate, expand, build or purchase facilities.

(3) Determine the financing barriers and impediments to the development of child care facilities, especially in underserved areas of the state.

(4) Identify funding sources that may be leveraged by the state, and partnerships with the philanthropic and corporate sectors that may be established, with the goal of increasing funding available for child care facilities for California's CalWORKs and low-income families.

SEC. 24. Section 8300 of the Education Code is amended and renumbered to read:

8279.7. (a) The Legislature recognizes the importance of providing quality child care services. It is, therefore, the intent of the Legislature to assist counties in improving the retention of qualified child care employees who work directly with children who receive state subsidized child care services.

(b) The funds appropriated for the purposes of this section by paragraph (11) of schedule (b) of Item 6110-196-0001 of Section 2.00 of the Budget Act of 2000 (Ch. 52, Stats. 2000), and that are described in subdivision (i) of Provision 7 of that item, shall be allocated to local child care and development planning councils based on the percentage of state-subsidized, center-based child care funds received in that county, and shall be used to address the retention of qualified child care employees in state-subsidized child care centers. Additionally, funds may be allocated annually thereafter for these purposes.

(c) The department shall develop guidelines for use by local child care and development planning councils in developing county plans for the expenditure of funds allocated pursuant to this section. These guidelines shall be consistent with the department's assessment of the current needs of the subsidized child care workforce, and shall be subject to the approval of the Secretary for Education and the Department of Finance. Any county plan developed pursuant to these guidelines shall be approved by the department prior to the allocation of funds to the local child care and development planning council.

(d) Funds provided to a county for the purposes of this section shall be used in accordance with the plan approved pursuant to subdivision (c). A county with an approved plan may retain up to 1 percent of the county's total allocation made pursuant to this section for reimbursement of administrative expenses associated with the planning process.

(e) The Superintendent of Public Instruction shall provide an annual report, no later than April 10 of each year, to the Legislature, the Secretary for Education, the Department of Finance, and the Governor that includes, but is not limited to, a summary of the distribution of the funds by county and a description of the use of the funds.

SEC. 25. The heading of Article 14 (commencing with Section 8285) of Chapter 2 of Part 6 of the Education Code is amended to read:

Article 14. Advisory Committee

SEC. 26. Section 8450 of the Education Code is amended to read:

8450. (a) All child development contractors are encouraged to develop and maintain a reserve within the child development fund,

derived from earned but unexpended funds. Child development contractors may retain all earned funds. For the purpose of this section, ''earned funds'' are those for which the required number of eligible service units have been provided.

(b) Earned funds may not be expended for any activities proscribed by Section 8406.7. Earned but unexpended funds shall remain in the contractor's reserve account within the child development fund and shall be expended only by direct service child development programs that are funded under contract with the department.

(c) Notwithstanding subdivisions (a) and (b), a contractor may retain a reserve fund balance for a resource and referral program, separate from the balance retained pursuant to subdivision (b), not to exceed 3 percent of the contract amount. Funds from this reserve account may be expended only by resource and referral programs that are funded under contract with the department.

(d) Notwithstanding subdivisions (a) and (b), a contractor may retain a reserve fund for alternative payment model and certificate child care contracts, separate from the reserve fund retained pursuant to subdivisions (b) and (c). Funds from this reserve account may be expended only by alternative payment model and certificate child care programs that are funded under contract with the department. The reserve amount allowed by this section may not exceed either of the following, whichever is greater:

(1) Two percent of the sum of the parts of each contract to which that contractor is a party that is allowed for administration pursuant to Section 8276.7 and that is allowed for supportive services pursuant to the provisions of the contract.

(2) One thousand dollars ($1,000).

(e) Each contractor's audit shall identify any funds earned by the contractor for each contract through the provision of contracted services in excess of funds expended.

(f) Any interest earned on reserve funds shall be included in the fund balance of the reserve. This reserve fund shall be maintained in an interest-bearing account.

(g) Moneys in a contractor's reserve fund may be used only for expenses that are reasonable and necessary costs as defined in subdivision (n) of Section 8208.

(h) Any reserve fund balance in excess of the amount authorized pursuant to subdivisions (c) and (d) shall be returned to the department pursuant to procedures established by the department and reappropriated as second-year funds consistent with Section 8278.

(i) Upon termination of all child development contracts between a contractor and the department, all moneys in a contractor's reserve fund shall be returned to the department pursuant to procedures established

by the department, and reappropriated as second-year funds consistent with Section 8278.

(j) Expenditures from, additions to, and balances in, the reserve fund shall be included in the agency's annual financial statements and audit.

SEC. 27. Section 8825 of the Education Code is amended to read:

8825. An eligible applicant may submit a project proposal that addresses one or more of the following areas:

(a) Arts education programs that are aligned to the state adopted visual and performing arts content standards and framework.

(b) Pupil assessment in the arts.

(c) Participation in local and state networks to create comprehensive standards based arts education programs.

(d) Expanding the capacity to assist pupils in achieving the state adopted visual and performing arts content standards.

(e) Developing an online statewide digital visual and performing arts resource center.

(f) Expanding arts education programs developed through participation in the Local Arts Education Partnership Program as set forth in Chapter 5 (commencing with Section 8810) of Part 6.

SEC. 28. Section 33540 of the Education Code is amended to read:

33540. (a) The State Board of Education and the department shall request that the commission review and revise, as necessary, the course requirements in the history-social science framework developed by the History-Social Science Curriculum Framework and Criteria Committee of the state board to ensure that minimum standards for courses in American government and civics include sufficient attention to teaching pupils how to interact, in a practical manner, with state and local governmental agencies and representatives to solve problems and to petition for changes in laws and procedures.

(b) When the history-social science framework is revised as required by law, the commission shall ensure that the following historical documents are incorporated into the framework, as appropriate:

(1) The Declaration of Independence.

(2) The United States Constitution, including the Bill of Rights.

(3) The Federalist Papers.

(4) The Emancipation Proclamation.

(5) The Gettysburg Address.

(6) George Washington's Farewell Address.

SEC. 29. Section 35294.95 of the Education Code is amended and renumbered 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 Sections 4600) of Title 5 of the California Code of Regulations.

SEC. 30. Section 41020.5 of the Education Code is amended to read:

41020.5. (a) If the Controller determines by two consecutive quality control reviews pursuant to Section 14504.2, or if a county superintendent of schools determines, that audits performed by a certified public accountant or public accountant under Section 41020 were not performed in substantial conformity with provisions of the audit guide, or that the audit reports, including amended reports, submitted by February 15 following the close of the fiscal year audited, for two consecutive years do not conform to provisions of the audit guide as required by Section 14504, the Controller or the county superintendent of schools, as appropriate, shall notify in writing the certified public accountant or public accountant and the California Board of Accountancy.

If the certified public accountant or public accountant does not file an appeal in writing with the California Board of Accountancy within 30 calendar days after receipt of the notification from the Controller or county superintendent of schools, the determination of the Controller or county superintendent of schools under this section shall be final.

(b) If an appeal is filed with the California Board of Accountancy, the board shall complete an investigation of the appeal within 90 days of the filing date. On the basis of the investigation, the board may do either of the following:

(1) Find that the determination of the Controller or county superintendent of schools should not be upheld and has no effect.

(2) Schedule the appeal for a hearing, in which case, the final action on the appeal shall be completed by the board within one year from the date of filing the appeal.

(c) If the determination of the Controller or county superintendent of schools under subdivision (a) becomes final, the certified public accountant or public accountant shall be ineligible to conduct audits under Section 41020 for a period of three years, or, in the event of an appeal, for any period, and subject to the conditions, that may be ordered by the California Board of Accountancy. Not later than the first day of March of each year, the Controller shall notify each school district and county office of education of those certified public accountants or public accountants determined to be ineligible under this section. School districts and county offices of education shall not use the audit services of a certified public accountant or public accountant ineligible under this section.

For the purposes of this section, the term ''certified public accountant or public accountant'' shall include any person or firm entering into a contract to conduct an audit under Section 41020.

This section shall not preclude the California Board of Accountancy from taking any disciplinary action it deems appropriate under other provisions of law.

SEC. 31. Section 41326 of the Education Code is amended to read:

41326. (a) Notwithstanding any other provision of this code, the acceptance by a school district of an apportionment made pursuant to Section 41320 that exceeds an amount equal to 200 percent of the amount of the reserve recommended for that district under the standards and criteria adopted pursuant to Section 33127 constitutes the agreement by the district to the conditions set forth in this article. Prior to applying for an emergency apportionment in the amount identified in this subdivision, a school district governing board shall discuss the need for that apportionment at a regular or special meeting of the governing board and, at that meeting, shall receive testimony regarding the apportionment from parents, exclusive representatives of employees of the district, and other members of the community. For purposes of this article, ''qualifying school district'' means a school district that accepts a loan as described in this subdivision.

(b) The Superintendent shall assume all the legal rights, duties, and powers of the governing board of a qualifying school district. The Superintendent, in consultation with the county superintendent of schools, shall appoint an administrator to act on his or her behalf in exercising the authority described in this subdivision in accordance with all of the following:

(1) The administrator shall serve under the direction and supervision of the Superintendent until terminated by the Superintendent at his or her discretion. The Superintendent shall consult with the county superintendent of schools before terminating the administrator.

(2) The administrator shall have recognized expertise in management and finance.

(3) To facilitate the appointment of the administrator and the employment of any necessary staff, for the purposes of this section, the Superintendent of Public Instruction is exempt from the requirements of Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code and Part 2 (commencing with Section 10100) of the Public Contracts Code.

(4) Notwithstanding any other law, the Superintendent may appoint an employee of the state or the office of the county superintendent of schools to act as administrator for up to the duration of the administratorship. During the tenure of his or her appointment, the administrator, if he or she is an employee of the state or the office of the

county superintendent of schools, is an employee of the school district, but shall remain in the same retirement system under the same plan that has been provided by his or her employment with the state or the office of the county superintendent of schools. Upon the expiration or termination of the appointment, the employee shall have the right to return to his or her former position, or to a position at substantially the same level as that position, with the state or the office of the county superintendent of schools. The time served in the appointment shall be counted for all purposes as if the administrator had served that time in his or her former position with the state or the office of the county superintendent of schools.

(5) Except for an individual appointed as an administrator by the Superintendent of Public Instruction pursuant to paragraph (4), the administrator shall be a member of the State Teachers' Retirement System, if qualified, for the period of service as administrator, unless he or she elects in writing not to become a member. A person who is a member or retirant of the State Teachers' Retirement System at the time of appointment shall continue to be a member or retirant of the system for the duration of the appointment. If the administrator chooses to become a member or is already a member, the administrator shall be placed on the payroll of the school district for the purposes of providing appropriate contributions to the system. The Superintendent may also require the administrator to be placed on the payroll of the school district for purposes of remuneration, other benefits, and payroll deductions.

(6) For the purposes of workers' compensation benefits, the administrator is an employee of the qualifying district, except that an administrator appointed pursuant to paragraph (4) may be deemed an employee of the state or office of the county superintendent of schools, as applicable.

(7) The qualifying district shall add the administrator as a covered employee of the school district all for purposes of errors and omissions liability insurance policies.

(8) The salary and benefits of the administrator shall be established by the Superintendent of Public Instruction and paid by the qualifying school district.

(9) The Superintendent or the administrator may, on a short-term basis, employ at district expense any staff necessary to assist the administrator, including, but not limited to, a certified public accountant.

(10) The administrator may do all of the following:

(A) Implement substantial changes in the fiscal policies and practices of the district, including, if necessary, the filing of a petition under Chapter 9 of the federal Bankruptcy Code for the adjustment of indebtedness.

(B) Revise the educational program of the district to reflect realistic income projections and pupil performance relative to state standards.

(C) Encourage all members of the school community to accept a fair share of the burden of the fiscal recovery of the district.

(D) Consult, for the purposes described in this subdivision, with the governing board of the school district, the exclusive representatives of the employees of the district, parents, and the community.

(E) Consult with, and seek recommendations from, the Superintendent, county superintendent of schools, and the County Office Fiscal Crisis and Management Assistance Team authorized pursuant to subdivision (c) of Section 42127.8 for the purposes described in this article.

(F) With the approval of the Superintendent, 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 Sections 41327 and 41327.1.

(c) (1) For the period of time during which the Superintendent of Public Instruction exercises the authority described in subdivision (b), the governing board of the qualifying school district shall serve as an advisory body reporting to the state-appointed administrator, and has no rights, duties, or powers, and is not entitled to any stipend, benefits, or other compensation from the district.

(2) Upon the appointment of an administrator pursuant to this section, the district superintendent of schools is no longer an employee of the district.

(3) A determination of the severance compensation for the district superintendent shall be made pursuant to subdivision (j).

(d) Notwithstanding Section 35031 or any other law, the administrator may, after according the employee reasonable notice and the opportunity for a hearing, terminate the employment of any deputy, associate, assistant superintendent of schools, or any other district level administrator who is employed by a school district under a contract of employment signed or renewed after January 1, 1992, if the employee fails to document, to the satisfaction of the administrator, that prior to the date of the acceptance of the apportionment he or she either advised the governing board of the district, or his or her superior, that actions contemplated or taken by the governing board could result in the fiscal insolvency of the district, or took other appropriate action to avert that fiscal insolvency.

(e) The authority of the Superintendent, and the administrator, under this section shall continue until all of the following occur:

(1) (A) At any time after one complete fiscal year has elapsed following the district's acceptance of a loan as described in subdivision

(a), the administrator determines, and so notifies the Superintendent and the county superintendent of schools, that future compliance by the school district with the recovery plans approved pursuant to paragraph (2) is probable.

(B) The Superintendent may return power to the governing board for any area listed in subdivision (a) of Section 41327.1 if performance under the recovery plan for that area has been demonstrated to the satisfaction of the Superintendent.

(2) The Superintendent has approved all of the recovery plans referred to in subdivision (a) of Section 41327 and the County Office Fiscal Crisis and Management Assistance Team completes the improvement plans specified in Section 41327.1 and has completed a minimum of two reports identifying the district's progress in implementing the improvement plans.

(3) The administrator certifies that all necessary collective bargaining agreements have been negotiated and ratified, and that the agreements are consistent with the terms of the recovery plans.

(4) The district has completed all reports required by the Superintendent and the administrator.

(5) The Superintendent determines that future compliance by the school district with the recovery plans approved pursuant to paragraph (2) is probable.

(f) When the conditions stated in subdivision (e) have been met, and at least 60 days after the Superintendent of Public Instruction has notified the Legislature, the Department of Finance, the Controller, and the county superintendent of schools that he or she expects the conditions prescribed pursuant to this section to be met, the school district governing board shall regain all of its legal rights, duties, and powers, except for the powers held by the trustee provided for pursuant to Article 2 (commencing with Section 41320). The Superintendent shall appoint a trustee under Section 41320.1 to monitor and review the operations of the district until the conditions of subdivision (b) of that section have been met.

(g) Notwithstanding subdivision (f), if the district violates any provision of the recovery plans approved by the Superintendent pursuant to this article within five years after the trustee appointed pursuant to Section 41320.1 is removed, the Superintendent may reassume, either directly or through an administrator appointed in accordance with this section, all of the legal rights, duties, and powers of the governing board of the district. The Superintendent shall return to the school district governing board all of its legal rights, duties, and powers reassumed under this subdivision when he or she determines that future compliance with the approved recovery plans is probable, or after a period of one year, whichever occurs later.

(h) Article 2 (commencing with Section 41320) shall apply except as otherwise specified in this article.

(i) It is the intent of the Legislature that the legislative budget subcommittees annually conduct a review of each qualifying school district that includes an evaluation of the financial condition of the district, the impact of the recovery plans upon the district's educational program, and the efforts made by the state-appointed administrator to obtain input from the community and the governing board of the district.

(j) (1) The district superintendent is entitled to a due process hearing for purposes of determining final compensation. The final compensation of the district superintendent shall be between zero and six times his or her monthly salary. The outcome of the due process hearing shall be reported to the Superintendent of Public Instruction and the public. The information provided to the public shall explain the rationale for the compensation.

(2) This subdivision applies only to a contract for employment negotiated on or after June 21, 2004.

(k) (1) When the Superintendent assumes control over a school district pursuant to subdivision (b), he or she shall, in consultation with the County Office Fiscal Crisis and Management Assistance Team, review the fiscal oversight of the district by the county superintendent of schools. The Superintendent may consult with other fiscal experts, including other county superintendents of schools and regional fiscal teams in conducting this review.

(2) Within three months of assuming control over a qualifying district, the Superintendent shall report his or her findings to the Legislature and shall provide a copy of that report to the Department of Finance. This report shall include findings as to fiscal oversight actions that were or were not taken and may include recommendations as to an appropriate legislative response to improve fiscal oversight.

(3) If after performing the duties described in paragraphs (1) and (2), the Superintendent determines that the county superintendent of schools failed to carry out his or her responsibilities for fiscal oversight as required by this code, the Superintendent may exercise the authority of the county superintendent of schools who has oversight responsibilities for a qualifying school district. If the Superintendent finds, based on the report required in paragraph (1), that the county superintendent of schools failed to appropriately take into account particular types of indicators of financial distress or failed to take appropriate remedial actions in the qualifying district, the Superintendent shall further investigate whether the county superintendent of schools failed to take into account those indicators or similarly failed to take appropriate actions in other districts with negative or qualified certifications and shall provide an additional report on the fiscal oversight practices of the

county superintendent to the appropriate policy and fiscal committees of each house of the Legislature and the Department of Finance.

SEC. 32. Section 41326.1 of the Education Code is amended to read:

41326.1. Within 30 days of assuming authority, an administrator who has control over a school district pursuant to Section 41326 shall discuss options for resolving the fiscal problems of the district with all of the following groups and shall consider, on a monthly basis, or more frequently if so desired by the administrator, information from one or more of the following groups:

(1) The governing board of the school district.

(2) Any advisory council of the school district.

(3) Any parent-teacher organization of the school district.

(4) Representatives from the community in which the school district is located.

(5) The district administrative team.

(6) The County Office Fiscal Crisis and Management Assistance Team.

(7) Representatives of employee bargaining units.

(8) The county superintendent of schools.

SEC. 33. Section 41344 of the Education Code is amended to read:

41344. (a) If, as the result of an audit or review, a local educational agency is required to repay an apportionment significant audit exception, the Superintendent of Public Instruction and the Director of Finance, or their designees, shall jointly establish a plan for repayment of state school funds that the local educational agency received on the basis of average daily attendance, or other data, that did not comply with statutory or regulatory requirements that were conditions of the apportionments. A local educational agency shall request a repayment plan within 90 days of receiving the final audit report or review, within 30 days of withdrawing or receiving a final determination regarding an appeal pursuant to subdivision (d), or, in the absence of an appeal pursuant to subdivision (d), within 30 days of withdrawing or receiving a determination of a summary review pursuant to subdivision (d) of Section 41344.1. At the time the local educational agency is notified, the Controller shall also be notified of the repayment plan. The repayment plan shall be established in accordance with the following:

(1) The Controller shall withhold the disallowed amount at the next principal apportionment or pursuant to paragraph (2), unless subdivision (d) of this section or subdivision (d) of Section 41344.1 applies, in which case the disallowed amount shall be withheld, at the next principal apportionment or pursuant to paragraph (2) following the determination regarding the appeal or summary appeal. In calculating the disallowed amount, the Controller shall determine the total amount of overpayment

received by the local educational agency on the basis of average daily attendance, or other data, reported by the local educational agency that did not comply with one or more statutory or regulatory requirements that are conditions of apportionment.

(2) If the Superintendent of Public Instruction and the Director of the Department of Finance concur that repayment of the full liability in the current fiscal year would constitute a severe financial hardship for the local agency, they may approve a repayment plan of equal annual payments over a period of up to eight years. The repayment plan shall include interest on each year's outstanding balance at the rate earned on the state's Pooled Money Investment Account during that year. The Superintendent of Public Instruction and the Director of the Department of Finance shall jointly establish this repayment plan. The Controller shall withhold amounts pursuant to the repayment plan.

(3) If the Superintendent of Public Instruction and the Director of the Department of Finance do not jointly establish a repayment plan, the State Controller shall withhold the entire disallowed amount determined pursuant to paragraph (1) at the next principal apportionment.

(b) (1) For purposes of computing average daily attendance pursuant to Section 42238.5, a local educational agency's prior fiscal year average daily attendance shall be reduced by an amount equal to any average daily attendance disallowed in the current year, by an audit or review, as defined in subdivision (e).

(2) Commencing with the 1999–2000 fiscal year, this subdivision may not result in a local educational agency repaying more than the value of the average daily attendance disallowed in the audit exception plus interest and other penalties or reductions in apportionments as provided by existing law.

(c) Notwithstanding any other provision of law, this section may not be waived under any authority set forth in this code except as provided in this section or Section 41344.1.

(d) Within 60 days of the date on which a local educational agency receives a final audit report resulting from an audit or review or within 30 days of receiving a determination of a summary review pursuant to subdivision (d) of Section 41344.1, a local educational agency may appeal a finding contained in the final report, pursuant to Section 41344.1. Within 90 days of the date on which the appeal is received by the panel, a hearing shall be held at which the local educational agency may present evidence or arguments if the local educational agency believes that the final report contains any finding that was based on errors of fact or interpretation of law. A repayment schedule may not commence until the panel reaches a determination regarding the appeal. If the panel determines that the local educational agency is correct in its assertion, in whole or in part, the allowable portion of any apportionment

payment that was withheld shall be paid at the next principal apportionment.

(e) As used in this section, ''audit or review'' means an audit conducted by the Controller's office, an annual audit conducted by a certified public accountant or a public accounting firm pursuant to Section 41020, and an audit or review conducted by a governmental agency that provided the local educational agency with an opportunity to provide a written response.

SEC. 34. Section 42127.6 of the Education Code is amended to read:

42127.6. (a) (1) A school district shall provide the county superintendent of schools with a copy of a study, report, evaluation, or audit that was commissioned by the district, the county superintendent of schools, the Superintendent, and state control agencies and that contains evidence that the school district is showing fiscal distress under the standards and criteria adopted in Section 33127, or a report on the school district by the County Office Fiscal Crisis and Management Assistance Team or any regional team created pursuant to subdivision (i) of Section 42127.8. The county superintendent of schools shall review and consider studies, reports, evaluations, or audits of the school district that contain evidence that the school district is demonstrating fiscal distress under the standards and criteria adopted in Section 33127 or that contain a finding by an external reviewer that more than three of the 15 most common predictors of a school district needing intervention, as determined by the County Office Fiscal Crisis and Management Assistance Team, are present. If these findings are made, the county superintendent of schools shall investigate the financial condition of the school district and determine if the school district may be unable to meet its financial obligations for the current or two subsequent fiscal years, or should receive a qualified or negative interim financial certification pursuant to Section 42131. If at any time during the fiscal year the county superintendent of schools determines that a school district may be unable to meet its financial obligations for the current or two subsequent fiscal years or if a school district has a qualified or negative certification pursuant to Section 42131, he or she shall notify the governing board of the school district and the Superintendent in writing of that determination and the basis for the determination. The notification shall include the assumptions used in making the determination and shall be available to the public. The county superintendent of schools shall report to the Superintendent on the financial condition of the school district and his or her proposed remedial actions, and shall do at least one of the following, and all actions that are necessary, to ensure that the district meets its financial obligations:

(A) Assign a fiscal expert, paid for by the county superintendent of schools, to advise the district on its financial problems.

(B) Conduct a study of the financial and budgetary conditions of the district that includes, but is not limited to, a review of internal controls. If, in the course of this review, the county superintendent of schools determines that his or her office requires analytical assistance or expertise that is not available through the district, he or she may employ, on a short-term basis, with the approval of the Superintendent, staff, including certified public accountants, to provide the assistance and expertise. The school district shall pay 75 percent and the county office of education shall pay 25 percent of these staff costs.

(C) Direct the school district to submit a financial projection of all fund and cash balances of the district as of June 30 of the current year and subsequent fiscal years as he or she requires.

(D) Require the district to encumber all contracts and other obligations, to prepare appropriate cashflow analyses and monthly or quarterly budget revisions, and to appropriately record all receivables and payables.

(E) Direct the district to submit a proposal for addressing the fiscal conditions that resulted in the determination that the district may not be able to meet its financial obligations.

(F) Withhold compensation of the members of the governing board and the district superintendent for failure to provide requested financial information. This action may be appealed to the Superintendent of Public Instruction pursuant to subdivision (b).

(2) Any contract entered into by a county superintendent of schools for the purposes of this subdivision is subject to the approval of the Superintendent.

(3) An employee of a school district who provides information regarding improper governmental activity, as defined in Section 44112, is entitled to the protection provided pursuant to Article 5 (commencing with Section 44110) of Chapter 1 of Part 25.

(b) Within five days of the county superintendent of schools making the determination specified in subdivision (a), a school district may appeal the basis of the determination, and any of the proposed actions that the county superintendent of schools has indicated that he or she will take to further examine the financial condition of the district. The Superintendent shall sustain or deny any or all parts of the appeal within 10 days.

(c) If, after taking the actions identified in subdivision (a), the county superintendent determines that a district will be unable to meet its financial obligations for the current or subsequent fiscal year, he or she shall notify the school district governing board and the Superintendent in writing of that determination and the basis for that determination. The

notification shall include the assumptions used in making the determination and shall be provided to the superintendent of the school district and parent and teacher organization of the district.

(d) Within five days of the county superintendent of schools making the determination specified in subdivision (c), a school district may appeal that determination to the Superintendent. The Superintendent shall sustain or deny the appeal within 10 days. If the governing board of the school district appeals the determination, the county superintendent of schools may stay any action of the governing board that he or she determines is inconsistent with the district's ability to meet its financial obligations for the current or subsequent fiscal year until resolution of the appeal by the Superintendent.

(e) If the appeal described in subdivision (d) is denied or not filed, or if the district has a negative certification pursuant to Section 42131, the county superintendent of schools, in consultation with the Superintendent, shall take at least one of the actions described in paragraphs (1) to (5), inclusive, and all actions that are necessary to ensure that the district meets its financial obligations and shall make a report to the Superintendent about the financial condition of the district and remedial actions proposed by the county superintendent.

(1) Develop and impose, in consultation with the Superintendent and the school district governing board, a budget revision that will enable the district to meet its financial obligations in the current fiscal year.

(2) Stay or rescind any action that is determined to be inconsistent with the school district's ability to meet its obligations for the current or subsequent fiscal year. This includes any actions up to the point that the subsequent year's budget is approved by the county superintendent of schools. The county superintendent of schools shall inform the school district governing board in writing of his or her justification for any exercise of authority under this paragraph.

(3) Assist in developing, in consultation with the governing board of the school district, a financial plan that will enable the district to meet its future obligations.

(4) Assist in developing, in consultation with the governing board of the school district, a budget for the subsequent fiscal year. If necessary, the county superintendent of schools shall continue to work with the governing board of the school district until the budget for the subsequent year is adopted.

(5) As necessary, appoint a fiscal adviser to perform any or all of the duties prescribed by this section on his or her behalf.

(f) Any action taken by the county superintendent of schools pursuant to paragraph (1) or (2) of subdivision (e) shall be accompanied by a notification that shall include the actions to be taken, the reasons for the

actions, and the assumptions used to support the necessity for these actions.

(g) This section does not authorize the county superintendent of schools to abrogate any provision of a collective bargaining agreement that was entered into by a school district prior to the date upon which the county superintendent of schools assumed authority pursuant to subdivision (e).

(h) The school district shall pay 75 percent and the county office of education shall pay 25 percent of the administrative expenses incurred pursuant to subdivision (e) or costs associated with improving the district's financial management practices. The Superintendent shall develop, and distribute to affected school districts and county offices of education, advisory guidelines regarding the appropriate amount of administrative expenses charged pursuant to this subdivision.

(i) Notwithstanding Section 42647 or 42650, or any other law, a county treasurer shall not honor any warrant if, pursuant to Sections 42127 to 42127.5, inclusive, or pursuant to this section, the county superintendent of schools or the Superintendent, as appropriate, has disapproved that warrant or the order on school district funds for which a warrant was prepared.

(j) Effective upon the certification of the election results for a newly organized school district pursuant to Section 35763, the county superintendent of schools may exercise any of the powers and duties of this section regarding the reorganized school district and the other affected school districts until the reorganized school district becomes effective for all purposes in accordance with Article 4 (commencing with Section 35530) of Chapter 3 of Part 21.

(k) The Superintendent shall monitor the efforts of a county office of education in exercising its authority under this section and may exercise any of that authority if the Superintendent determines that the county superintendent of schools failed to effectively carry out his or her responsibilities for fiscal oversight as required by this code in resolving the financial problems of the school district. Upon a decision to exercise the powers of the county superintendent of schools, the county superintendent of schools is relieved of those powers assumed by the Superintendent. In addition to the actions taken by the county superintendent of schools, the Superintendent shall take further actions to ensure the long-term fiscal stability of the district. The county office of education shall reimburse the Superintendent for all of his or her costs in exercising his or her authority under this subdivision. The Superintendent shall promptly notify the county superintendent of schools, the county board of education, the superintendent of the school district, the governing board of the school district, the appropriate policy and fiscal committees of each house of the Legislature, and the

Department of Finance of his or her decision to exercise the authority of the county superintendent of schools.

SEC. 35. Section 42120 of the Education Code is amended to read:

42120. If the county board of education neglects or refuses to make a county office of education budget in the manner as prescribed by this article, or neglects to file interim reports pursuant to subdivision (*l*) of Section 1240, the Superintendent of Public Instruction shall not make any apportionment of state or federal money for that particular county office of education for the current fiscal year, and the Superintendent of Public Instruction shall notify the appropriate county official that he or she shall not approve any warrants issued by the county office of education.

SEC. 36. Section 42129 of the Education Code is amended to read:

42129. School districts and county offices of education shall transmit to the department, on a timely basis, all budget reports, prior year expenditure reports, qualified and negative financial status reports, program cost accounting reports, certifications, and audit reports as prescribed by subdivision (*l*) of Section 1240, subdivision (g) of Section 35035, Sections 1621, 1623, 41020, 42127, 42131, and Chapter 7.2 (commencing with Section 56836) of Part 30, and those reports used to calculate the first, second, and annual principal apportionments and special purpose apportionments for school districts and county offices of education. If the reports are not submitted to the Superintendent of Public Instruction within 14 days after the submission date prescribed in the statute or specified by the Superintendent of Public Instruction, the Superintendent of Public Instruction may direct the county auditor to withhold payment of any stipend, expenses, or salaries to the district superintendent, county superintendent, or members of the governing boards, as appropriate. The payments shall be withheld until the delinquent reports have been submitted to the department. If the county superintendent performs the functions of the county auditor, the Superintendent of Public Instruction may direct the county superintendent to withhold the payments specified in this section.

SEC. 37. Section 42131 of the Education Code is amended to read:

42131. (a) (1) Pursuant to the reports required by Section 42130, the governing board of each school district shall certify, in writing, within 45 days after the close of the period being reported, whether the school district is able to meet its financial obligations for the remainder of the fiscal year and, based on current forecasts, for the subsequent fiscal year. These certifications shall be based upon the board's assessment, on the basis of standards and criteria for fiscal stability adopted by the State Board of Education pursuant to Section 33127, of the district budget, as revised to reflect current information regarding the adopted State Budget, district property tax revenues pursuant to Sections 95 to 100,

inclusive, of the Revenue and Taxation Code, and ending balances for the preceding fiscal year as reported pursuant to Section 42100. The certifications shall be classified as positive, qualified, or negative, as prescribed by the Superintendent of Public Instruction for the purposes of determining subsequent actions by the Superintendent of Public Instruction, the Controller, or the county superintendent of schools, pursuant to subdivisions (b) and (c). These certifications shall be based upon the financial and budgetary reports required by Section 42130 but may include additional financial information known by the governing board to exist at the time of each certification. For purposes of this subdivision, a negative certification shall be assigned to any school district that, based upon current projections, will be unable to meet its financial obligations for the remainder of the fiscal year or the subsequent fiscal year. A qualified certification shall be assigned to any school district that, based upon current projections, may not meet its financial obligations for the current fiscal year or two subsequent fiscal years. A positive certification shall be assigned to any school district that, based upon current projections, will meet its financial obligations for the current fiscal year and subsequent two fiscal years.

(2) A copy of each certification and a copy of the report submitted to the governing board pursuant to Section 42130 shall be filed with the county superintendent of schools. If a county office of education receives a positive certification when it determines a negative or qualified certification should have been filed, the county superintendent of schools shall change the certification to negative or qualified, as appropriate, and, no later than 75 days after the close of the period being reported, shall provide notice of that action to the governing board of the school district and to the Superintendent of Public Instruction. No later than five days after a school district receives notice from the county superintendent of schools of a change in the district's certification to negative or qualified, the governing board of the district may submit an appeal to the Superintendent of Public Instruction regarding the validity of that change, in accordance with the criteria applied to those designations pursuant to this subdivision. No later than 10 days after receiving that appeal, the Superintendent of Public Instruction shall determine the certification to be assigned to the district, and shall notify the school district governing board and the county superintendent of schools of that determination.

Copies of any certification in which the governing board is unable to certify unqualifiedly that these financial obligations will be met and a copy of the report submitted to the governing board pursuant to Section 42130 shall be sent by the county office of education to the Controller and the Superintendent of Public Instruction at the time of the certification, together with a completed transmittal form provided by the

Superintendent of Public Instruction. Within 75 days after the close of the reporting period on all school district certifications that are classified as qualified or negative pursuant to this section, the appropriate county superintendent of schools shall submit to the Superintendent of Public Instruction and the Controller his or her comments on those certifications and report any action proposed or taken pursuant to subdivision (b).

(3) All reports and certifications required under this subdivision shall be in a format or on forms prescribed by the Superintendent of Public Instruction, and shall be based on standards and criteria for fiscal stability adopted by the State Board of Education pursuant to Section 33127.

(4) This subdivision does not preclude the submission of additional budgetary or financial reports by the county superintendent of schools to the district governing board, or to the Superintendent of Public Instruction.

(b) As to any school district having a negative or qualified certification, the county superintendent of schools shall exercise his or her authority, as necessary, pursuant to Section 42127.6.

(c) Within 75 days after the close of each reporting period, each county superintendent of schools shall report to the Controller and the Superintendent of Public Instruction as to whether the governing board of each of the school districts under his or her jurisdiction has submitted the certification required by subdivision (a). That report shall account for all districts under the jurisdiction of the county office of education and indicate the type of certification filed by each district.

(d) The Controller's office may conduct an audit or review of the fiscal condition of any district having a negative or qualified certification.

(e) The governing board of each school district filing a qualified or negative certification for the second report required under Section 42130, or classified as qualified or negative by the county superintendent of schools, shall provide to the county superintendent of schools, the Controller, and the Superintendent of Public Instruction no later than June 1, financial statement projections of the district's fund and cash balances through June 30 for the period ending April 30. The governing boards of all other school districts are encouraged to develop a similar financial statement for use in developing the beginning fund balances of the district for the ensuing fiscal year.

(f) Any school district for which the county board of education serves as the governing board is not subject to subdivisions (a) to (f), inclusive, but is governed instead by the interim report, monitoring, and review procedures set forth in subdivision (*l*) of Section 1240 and in Article 2 (commencing with Section 1620) of Chapter 5 of Part 2.

SEC. 38. Section 42133.5 of the Education Code is amended to read:

42133.5. Regardless of the certification of the budgetary status of a school district or county office of education under subdivision (*l*) of Section 1240 or Section 42131, the proceeds obtained by a school district from the sale of a sale back or leaseback agreement, or interests therein, or a debt instrument payable from payments under a sale back or leaseback agreement shall not be used for general operating purposes of the school district.

SEC. 39. Section 46200.5 of the Education Code is amended to read:

46200.5. (a) In the 1985–86 fiscal year, for each county office of education that certifies to the Superintendent of Public Instruction that it offers 180 days or more of instruction per school year of special day classes pursuant to Section 56364.2, the Superintendent of Public Instruction shall determine an amount equal to seventy dollars ($70) per unit of current year second principal apportionment average daily attendance for special day classes. This computation shall be included in computations made by the superintendent pursuant to Chapter 7.2 (commencing with Section 56836) of Part 30.

(b) For any county office of education that received an apportionment pursuant to subdivision (a) and that offered less than 180 days of instruction in the 1986–87 fiscal year, to the 2000–01 fiscal year, inclusive, and that does not provide the minimum number of instructional minutes specified in subdivision (a) of Section 46201 for that fiscal year, the Superintendent of Public Instruction shall reduce the special education apportionment per unit of average daily attendance for that fiscal year by an amount attributable to the increase received pursuant to subdivision (a), as adjusted in fiscal years subsequent to the 1985–86 fiscal year.

(c) For any county office of education that receives an apportionment pursuant to subdivision (a) and that offers less than 180 days of instruction or in multitrack year-round schools a minimum of 163 days, in the 2001–02 fiscal year, or any fiscal year thereafter, the Superintendent of Public Instruction shall withhold from the county office of education's revenue limit apportionment for the average daily attendance of each affected grade level the sum of 0.0056 multiplied by that apportionment, for each day less than 180 or, in multitrack year-round schools, for each day less than 163, that the county office of education offered.

(d) For any county office of education that received an apportionment pursuant to subdivision (a) and that offered less than 180 days of instruction as required in subdivision (a) in the 1986–87 fiscal year, to either the end of the final year of the teacher bargaining unit contract in

force in that county office on January 1, 2002, inclusive, or, if no teacher bargaining unit contract was in force in that county office on January 1, 2002, to the end of the 2001–02 fiscal year, inclusive, and that provided the minimum number of instructional minutes in subdivision (a) of Section 46201.5 during all of the period applicable to the county office pursuant to this subdivision, subdivision (c) does not apply until the first fiscal year following the end of the applicable period of years.

SEC. 40. Section 46201.5 of the Education Code is amended to read:

46201.5. (a) In each of the 1985–86 and 1986–87 fiscal years, for each county office of education that certifies to the Superintendent of Public Instruction that, for special day classes pursuant to Section 56364.2, it offers at least the amount of instructional time specified in this subdivision, the Superintendent of Public Instruction shall determine an amount equal to eighty dollars ($80) in the 1985–86 fiscal year and forty dollars ($40) in the 1986–87 fiscal year per unit of current year second principal apportionment average daily attendance for special day classes in kindergarten and grades 1 to 8, inclusive, and one hundred sixty dollars ($160) in the 1985–86 fiscal year and eighty dollars ($80) in the 1986–87 fiscal year per unit of current year second principal apportionment average daily attendance for special day classes in grades 9 to 12, inclusive.

This computation shall be included in computations made by the superintendent pursuant to Article 2 (commencing with Section 56836.06) of Chapter 7.2 of Part 30.

(1) In the 1985–86 fiscal year:

(A) 34,500 minutes in kindergarten.

(B) 47,016 minutes in grades 1 to 3, inclusive.

(C) 50,000 minutes in grades 4 to 8, inclusive.

(D) 57,200 minutes in grades 9 to 12, inclusive.

(2) In the 1986–87 fiscal year:

(A) 36,000 minutes in kindergarten.

(B) 50,400 minutes in grades 1 to 3, inclusive.

(C) 54,000 minutes in grades 4 to 8, inclusive.

(D) 64,800 minutes in grades 9 to 12, inclusive.

(b) Each county office of education that receives an apportionment pursuant to subdivision (a) in a fiscal year shall, in the subsequent fiscal year, add the amount received per pupil to the county office's base special education apportionment.

(c) For each county office of education that receives an apportionment pursuant to subdivision (a) in the 1985–86 fiscal year, and that reduces the amount of instructional time offered below the minimum amounts specified in paragraph (1) of subdivision (a) in the 1986–87 fiscal year, or any fiscal year thereafter, up to and including the

2000–01 fiscal year, the Superintendent of Public Instruction shall reduce the special education apportionment for the fiscal year in which the reduction occurs by an amount attributable to the increase in the 1986–87 fiscal year special education apportionment pursuant to subdivision (b), as adjusted in the 1986–87 fiscal year and fiscal years thereafter.

(d) For each county office of education that receives an apportionment pursuant to subdivision (a) in the 1986–87 fiscal year and that reduces the amount of instructional time offered below the minimum amounts specified in paragraph (2) of subdivision (a) in the 1987–88 fiscal year, or any fiscal year thereafter, up to and including the 2000–01 fiscal year, the superintendent shall reduce the special education apportionment for the fiscal year in which the reduction occurs by an amount attributable to the increase in the 1987–88 fiscal year special education apportionment pursuant to subdivision (b), as adjusted in the 1987–88 fiscal year and fiscal years thereafter.

(e) For each county office of education that receives an apportionment pursuant to subdivision (a) in the 1986–87 fiscal year and that reduces the amount of instructional time offered below the minimum amounts specified in paragraph (2) of subdivision (a) in the 2001–02 fiscal year, or any fiscal year thereafter, the Superintendent of Public Instruction shall withhold from the special education apportionment for the average daily attendance of each affected grade level, the sum of that apportionment multiplied by the percentage of the minimum offered minutes at that grade level that the county office of education failed to offer.

SEC. 41. Section 47632 of the Education Code is amended to read:

47632. For purposes of this chapter, the following terms shall be defined as follows:

(a) ''General-purpose entitlement'' means an amount computed by the formula set forth in Section 47633 beginning in the 1999–2000 fiscal year, which is based on the statewide average amounts of general-purpose funding from those state and local sources identified in Section 47633 received by school districts of similar type and serving similar pupil populations.

(b) ''Categorical block grant'' means an amount computed by the formula set forth in Section 47634 beginning in the 1999–2000 fiscal year, which is based on the statewide average amounts of categorical aid from those sources identified in Section 47634 received by school districts of similar type and serving similar pupil populations.

(c) ''General-purpose funding'' means those funds that consist of state aid, local property taxes, and other revenues applied toward a school district's revenue limit, pursuant to Section 42238.

(d) ''Categorical aid'' means aid that consists of state or federally funded programs, or both, which are apportioned for specific purposes set forth in statute or regulation.

(e) ''Educationally disadvantaged pupils'' means those pupils who are eligible for subsidized meals pursuant to Section 49552 or are identified as English learners pursuant to subdivision (a) of Section 306, or both.

(f) ''Operational funding'' means all funding except funding for capital outlay.

(g) ''School district of a similar type'' means a school district that is serving similar grade levels.

(h) ''Similar pupil population'' means similar numbers of pupils by grade level, with a similar proportion of educationally disadvantaged pupils.

(i) ''Sponsoring local educational agency'' means the following:

(1) In the cases where a charter school is granted by a school district, the sponsoring local educational agency is the school district.

(2) In cases where a charter is granted by a county office of education after having been previously denied by a school district, the sponsoring local educational agency means the school district that initially denied the charter petition.

(3) In cases where a charter is granted by the State Board of Education after having been previously denied by a local educational agency, the sponsoring local educational agency means the local educational agency designated by the State Board of Education pursuant to paragraph (1) of subdivision (k) of Section 47605 or if a local educational agency is not designated, the local educational agency that initially denied the charter petition.

(4) For pupils attending county-sponsored charter schools who are eligible to attend those schools solely as a result of parental request pursuant to subdivision (b) of Section 1981, the sponsoring local educational agency means the pupils' school district of residence.

(5) For pupils attending countywide charter schools pursuant to Section 47605.6 who reside in a basic aid school district, the sponsoring local educational agency means the school district of residence of the pupil. For purposes of this paragraph, ''basic aid school district'' means a school district that does not receive an apportionment of state funds pursuant to subdivision (h) of Section 42238.

SEC. 42. Section 47646 of the Education Code is amended to read:

47646. (a) A charter school that is deemed to be a public school of the local educational agency that granted the charter for purposes of special education shall participate in state and federal funding for special education in the same manner as any other public school of that local educational agency. A child with disabilities attending the charter school

shall receive special education instruction or designated instruction and services, or both, in the same manner as a child with disabilities who attends another public school of that local educational agency. The agency that granted the charter shall ensure that all children with disabilities enrolled in the charter school receive special education and designated instruction and services in a manner that is consistent with their individualized education program and is in compliance with the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and implementing regulations.

(b) In administering the local operation of special education pursuant to the local plan established pursuant to Chapter 3 (commencing with Section 56205) of Part 30, in which the local educational agency that granted the charter participates, the local educational agency that granted the charter shall ensure that each charter school that is deemed a public school for purposes of special education receives an equitable share of special education funding and services consisting of either, or both, of the following:

(1) State and federal funding provided to support special education instruction or designated instruction and services, or both, provided or procured by the charter school that serves pupils enrolled in and attending the charter school. Notwithstanding any other provision of this chapter, a charter school may report average daily attendance to accommodate eligible pupils who require extended year services as part of an individualized education program.

(2) Any necessary special education services, including administrative and support services and itinerant services, that is provided by the local educational agency on behalf of pupils with disabilities enrolled in the charter school.

(c) In administering the local operation of special education pursuant to the local plan established pursuant to Chapter 3 (commencing with Section 56205) of Part 30, in which the local educational agency that granted the charter participates, the local educational agency that granted the charter shall ensure that each charter school that is deemed a public school for purposes of special education also contributes an equitable share of its charter school block grant funding to support districtwide special education instruction and services, including, but not limited to, special education instruction and services for pupils with disabilities enrolled in the charter school.

SEC. 43. Section 48293 of the Education Code is amended to read:

48293. (a) Any parent, guardian, or other person having control or charge of any pupil who fails to comply with this chapter, unless excused or exempted therefrom, is guilty of an infraction and shall be punished as follows:

(1) Upon a first conviction, by a fine of not more than one hundred dollars ($100).

(2) Upon a second conviction, by a fine of not more than two hundred fifty dollars ($250).

(3) Upon a third or subsequent conviction, if the person has willfully refused to comply with this section, by a fine of not more than five hundred dollars ($500). In lieu of imposing the fines prescribed in paragraphs (1), (2), and (3), the court may order the person to be placed in a parent education and counseling program.

(b) A judgment that a person convicted of an infraction be punished as prescribed in subdivision (a) may also provide for the payment of the fine within a specified time or in specified installments, or for participation in the program. A judgment granting a defendant time to pay the fine or prescribing the days of attendance in a program shall order that if the defendant fails to pay the fine, or any installment thereof, on the date that it is due, or fails to attend a program on a prescribed date, he or she shall appear in court on that date for further proceedings. Willful violation of the order is punishable as contempt.

(c) Until January 1, 2006, the court may also order that the person convicted of the violation of subdivision (a) immediately enroll or reenroll the pupil in the appropriate school or educational program and provide proof of enrollment to the court. Willful violation of an order under this subdivision is punishable as civil contempt with a fine of up to one thousand dollars ($1,000). An order of contempt under this subdivision shall not include imprisonment.

(d) The Legislative Analyst, in consultation with the California District Attorney's Association and the State Department of Education, shall develop a report to be submitted to the Legislature on or before January 1, 2004, concerning the implementation of this subdivision.

SEC. 44. Article 4 (commencing with Section 48700) of Chapter 4 of Part 27 of the Education Code is repealed.

SEC. 45. Section 49110 of the Education Code is amended to read:

49110. (a) It is the intent of the Legislature that school district personnel responsible for issuing work permits to pupils have a working knowledge of California labor laws as they relate to minors and be trained to provide the pupils practical personal guidance in career education.

(b) The superintendent of any school district in which any minor resides, a person holding a services credential with a specialization in pupil personnel services authorized by the superintendent in writing, or a certificated work experience education teacher or coordinator authorized by the superintendent in writing, may issue to certain minors permits to work. If the minor resides in a portion of a county not under the jurisdiction of the superintendent of any school district, the permit

to work shall be issued by the superintendent of schools of the county, by a person holding a services credential with a specialization in pupil personnel services authorized by the superintendent in writing, or a certificated work experience education teacher or coordinator authorized by the superintendent in writing.

(c) A permit to work shall not be issued until the written request therefor from the parent, guardian, foster parent, caregiver with whom the minor resides, or residential shelter services provider, has been filed with the issuing authority. ''Residential shelter services'' refers to residential and other support services provided to minors by a governmental agency, a person or agency under contract with a governmental agency to provide these services, an agency receiving funding from community funds, or a licensed community care facility or crisis resolution center on a temporary or emergency basis in a facility that services only minors.

(d) If the certificated person designated by the superintendent to issue work permits is not available, and delay in issuing a permit would jeopardize the ability of a pupil to secure work, a person authorized by the superintendent may issue the work permit.

(e) If a district does not employ or contract with a person holding a services credential with a specialization in pupil personnel services or with a certificated work experience education teacher or coordinator, the superintendent may authorize, in writing, a person who does not hold that credential to issue permits to work during periods of time in which the superintendent is absent from the district.

SEC. 46. Section 51101 of the Education Code is amended to read:

51101. (a) Except as provided in subdivision (d), the parents and guardians of pupils enrolled in public schools have the right and should have the opportunity, as mutually supportive and respectful partners in the education of their children within the public schools, to be informed by the school, and to participate in the education of their children, as follows:

(1) Within a reasonable period of time following making the request, to observe the classroom or classrooms in which their child is enrolled or for the purpose of selecting the school in which their child will be enrolled in accordance with the requirements of any intradistrict or interdistrict pupil attendance policies or programs.

(2) Within a reasonable time of their request, to meet with their child's teacher or teachers and the principal of the school in which their child is enrolled.

(3) To volunteer their time and resources for the improvement of school facilities and school programs under the supervision of district employees, including, but not limited to, providing assistance in the classroom with the approval, and under the direct supervision, of the

teacher. Although volunteer parents may assist with instruction, primary instructional responsibility shall remain with the teacher.

(4) To be notified on a timely basis if their child is absent from school without permission.

(5) To receive the results of their child's performance on standardized tests and statewide tests and information on the performance of the school that their child attends on standardized statewide tests.

(6) To request a particular school for their child, and to receive a response from the school district. This paragraph does not obligate the school district to grant the parent's request.

(7) To have a school environment for their child that is safe and supportive of learning.

(8) To examine the curriculum materials of the class or classes in which their child is enrolled.

(9) To be informed of their child's progress in school and of the appropriate school personnel whom they should contact if problems arise with their child.

(10) To have access to the school records of their child.

(11) To receive information concerning the academic performance standards, proficiencies, or skills their child is expected to accomplish.

(12) To be informed in advance about school rules, including disciplinary rules and procedures in accordance with Section 48980, attendance policies, dress codes, and procedures for visiting the school.

(13) To receive information about any psychological testing the school does involving their child and to deny permission to give the test.

(14) To participate as a member of a parent advisory committee, schoolsite council, or site-based management leadership team, in accordance with any rules and regulations governing membership in these organizations. In order to facilitate parental participation, schoolsite councils are encouraged to schedule a biannual open forum for the purpose of informing parents about current school issues and activities and answering parents' questions. The meetings should be scheduled on weekends, and prior notice should be provided to parents.

(15) To question anything in their child's record that the parent feels is inaccurate or misleading or is an invasion of privacy and to receive a response from the school.

(16) To be notified, as early in the school year as practicable pursuant to Section 48070.5, if their child is identified as being at risk of retention and of their right to consult with school personnel responsible for a decision to promote or retain their child and to appeal a decision to retain or promote their child.

(b) In addition to the rights described in subdivision (a), parents and guardians of pupils, including those parents and guardians whose primary language is not English, shall have the opportunity to work

together in a mutually supportive and respectful partnership with schools, and to help their children succeed in school. Each governing board of a school district shall develop jointly with parents and guardians, and shall adopt, a policy that outlines the manner in which parents or guardians of pupils, school staff, and pupils may share the responsibility for continuing the intellectual, physical, emotional, and social development and well-being of pupils at each schoolsite. The policy shall include, but is not necessarily limited to, the following:

(1) The means by which the school and parents or guardians of pupils may help pupils to achieve academic and other standards of the school.

(2) A description of the school's responsibility to provide a high quality curriculum and instructional program in a supportive and effective learning environment that enables all pupils to meet the academic expectations of the school.

(3) The manner in which the parents and guardians of pupils may support the learning environment of their children, including, but not limited to, the following:

(A) Monitoring attendance of their children.

(B) Ensuring that homework is completed and turned in on a timely basis.

(C) Participation of the children in extracurricular activities.

(D) Monitoring and regulating the television viewed by their children.

(E) Working with their children at home in learning activities that extend learning in the classroom.

(F) Volunteering in their children's classrooms, or for other activities at the school.

(G) Participating, as appropriate, in decisions relating to the education of their own child or the total school program.

(c) All schools that participate in the High Priority Schools Grant Program established pursuant to Article 3.5 (commencing with Section 52055.600) of Chapter 6.1 of Part 28 and that maintain kindergarten or any of grades 1 to 5, inclusive, shall jointly develop with parents or guardians for all children enrolled at that schoolsite, a school-parent compact pursuant to Section 6319 of Title 20 of the United States Code.

(d) This section does not authorize a school to inform a parent or guardian, as provided in this section, or to permit participation by a parent or guardian in the education of a child, if it conflicts with a valid restraining order, protective order, or order for custody or visitation issued by a court of competent jurisdiction.

SEC. 47. Section 51101.1 of the Education Code is amended to read:

51101.1. (a) A parent or guardian's lack of English fluency does not preclude a parent or guardian from exercising the rights guaranteed

under this chapter. A school district shall take all reasonable steps to ensure that all parents and guardians of pupils who speak a language other than English are properly notified in English and in their home language, pursuant to Section 48985, of the rights and opportunities available to them pursuant to this section.

(b) Parents and guardians of English learners are entitled to participate in the education of their children pursuant to Section 51101 and as follows:

(1) To receive, pursuant to paragraph (5) of subdivision (a) of Section 51101, the results of their child's performance on standardized tests, including the English language development test.

(2) To be given any required written notification, under any applicable law, in English and the pupil's home language pursuant to Section 48985.

(3) To participate in school and district advisory bodies in accordance with federal and state laws and regulations.

(4) To support their children's advancement toward literacy. School personnel shall encourage parents and guardians of English learners to support their child's progress toward literacy both in English and, to the extent possible, in the child's home language. School districts are encouraged to make available, to the extent possible, surplus or undistributed instructional materials to parents and guardians, pursuant to subdivision (d) of Section 60510, in order to facilitate parental involvement in their children's education.

(5) To be informed, pursuant to Sections 33126 and 48985, about statewide and local academic standards, testing programs, accountability measures, and school improvement efforts.

(c) A school with a substantial number of pupils with a home language other than English is encouraged to establish parent centers with personnel who can communicate with the parents and guardians of these children to encourage understanding of and participation in the educational programs in which their children are enrolled.

SEC. 48. Section 51224.5 of the Education Code is amended to read:

51224.5. (a) The adopted course of study for grades 7 to 12, inclusive, shall include algebra as part of the mathematics area of study pursuant to subdivision (f) of Section 51220.

(b) Commencing with the 2003–04 school year and each year thereafter, at least one course, or a combination of the two courses, in mathematics required to be completed pursuant to subparagraph (B) of paragraph (1) of subdivision (a) of Section 51225.3 by pupils while in grades 9 to 12, inclusive, prior to receiving a diploma of graduation from high school, shall meet or exceed the rigor of the content standards for

Algebra I, as adopted by the State Board of Education pursuant to Section 60605.

(c) A pupil who, prior to enrollment in grade 9, completes coursework in algebra that meets or exceeds the rigor of the content standards for Algebra I, as adopted by the State Board of Education, is exempt from subdivision (b), but is not exempt from the requirement that the pupil complete two courses in mathematics while enrolled in grades 9 to 12, inclusive, as specified in subparagraph (B) of paragraph (1) of subdivision (a) of Section 51225.3.

SEC. 49. Section 51240 is added to the Education Code, to read:

51240. (a) If any part of a school's instruction in health conflicts with the religious training and beliefs of a parent or guardian of a pupil, the pupil, upon written request of the parent or guardian, shall be excused from the part of the instruction that conflicts with the religious training and beliefs.

(b) For purposes of this section, ''religious training and beliefs'' includes personal moral convictions.

SEC. 50. Section 51747 of the Education Code is amended to read:

51747. A school district or county office of education shall not be eligible to receive apportionments for independent study by pupils, regardless of age, unless it has adopted written policies, and has implemented those policies, pursuant to rules and regulations adopted by the Superintendent of Public Instruction, that include, but are not limited to, all of the following:

(a) The maximum length of time, by grade level and type of program, that may elapse between the time an independent study assignment is made and the date by which the pupil must complete the assigned work.

(b) The number of missed assignments that will be allowed before an evaluation is conducted to determine whether it is in the best interests of the pupil to remain in independent study, or whether he or she should return to the regular school program. A written record of the findings of any evaluation made pursuant to this subdivision shall be treated as a mandatory interim pupil record. The record shall be maintained for a period of three years from the date of the evaluation and, if the pupil transfers to another California public school, the record shall be forwarded to that school.

(c) A requirement that a current written agreement for each independent study pupil shall be maintained on file including, but not limited to, all of the following:

(1) The manner, time, frequency, and place for submitting a pupil's assignments and for reporting his or her progress.

(2) The objectives and methods of study for the pupil's work, and the methods utilized to evaluate that work.

(3) The specific resources, including materials and personnel, that will be made available to the pupil.

(4) A statement of the policies adopted pursuant to subdivisions (a) and (b) regarding the maximum length of time allowed between the assignment and the completion of a pupil's assigned work, and the number of missed assignments allowed prior to an evaluation of whether or not the pupil should be allowed to continue in independent study.

(5) The duration of the independent study agreement, including the beginning and ending dates for the pupil's participation in independent study under the agreement. No independent study agreement shall be valid for any period longer than one semester, or one-half year for a school on a year-round calendar.

(6) A statement of the number of course credits or, for the elementary grades, other measures of academic accomplishment appropriate to the agreement, to be earned by the pupil upon completion.

(7) The inclusion of a statement in each independent study agreement that independent study is an optional educational alternative in which no pupil may be required to participate. In the case of a pupil who is referred or assigned to any school, class, or program pursuant to Section 48915 or 48917, the agreement also shall include the statement that instruction may be provided to the pupil through independent study only if the pupil is offered the alternative of classroom instruction.

(8) Each written agreement shall be signed, prior to the commencement of independent study, by the pupil, the pupil's parent, legal guardian, or caregiver, if the pupil is less than 18 years of age, the certificated employee who has been designated as having responsibility for the general supervision of independent study, and all persons who have direct responsibility for providing assistance to the pupil. For purposes of this paragraph ''caregiver'' means a person who has met the requirements of Part 1.5 (commencing with Section 6550) of the Family Code.

SEC. 51. Section 52515 of the Education Code is amended to read:

52515. State funds shall not be apportioned to a school district on account of the attendance of pupils enrolled in adult schools unless, the courses have been approved by the department pursuant to Section 41976.

SEC. 52. Section 52616.18 of the Education Code is amended to read:

52616.18. (a) Commencing July 1, of each fiscal year, notwithstanding that a school district was not authorized to operate an adult education program pursuant to Section 41976, a school district may apply to the department for initial program approval and funding to begin any adult education programs specified in Section 41976 provided the district meets the following criteria:

(1) The district did not operate nor claim state apportionment for an adult education program in the prior fiscal year.

(2) The district enters into a written delineation of function agreement pursuant to Chapter 3 (commencing with Section 8500) of Part 6 for the fiscal year for which initial funding is authorized between the applicant school district and the community college district in the same geographical area.

(b) The Superintendent of Public Instruction may approve the program and state apportionment funding on the basis of the school district's documented need for adult education programs. The superintendent shall issue a program advisory that sets forth the criteria of need that a district is required to document.

(c) A school district that receives state funding under this section shall ensure that priority for program service is given to persons applying for the district's adult education programs authorized by paragraphs (2), (3), and (4) of subdivision (a) of Section 41976.

(d) A school district that maintains a current delineation of function agreement with a community college district pursuant to Chapter 3 (commencing with Section 8500) of Part 6 are authorized to divide the responsibility for offering courses pursuant to Section 41976 by mutual agreement of the boards of those districts.

(e) This section shall be operative to the extent that the superintendent determines that funds are available pursuant to Section 52616.19 to implement the section on or after July 1, of each fiscal year.

SEC. 53. Section 56027 of the Education Code is amended to read:

56027. ''Local plan'' means a plan that meets the requirements of Chapter 3 (commencing with Section 56205) and that is submitted by a school district, special education local plan area, or county office.

SEC. 54. Section 56028 of the Education Code is amended to read:

56028. (a) ''Parent,'' includes any of the following:

(1) A person having legal custody of a child.

(2) Any adult pupil for whom no guardian or conservator has been appointed.

(3) A person acting in the place of a parent, including a grandparent or stepparent with whom the child lives. ''Parent'' also includes a parent surrogate.

(4) A foster parent if the natural parents' authority to make educational decisions on the child's behalf has been specifically limited by court order in accordance with subsection (b) of Section 300.20 of Title 34 of the Code of Federal Regulations.

(b) ''Parent'' does not include the state or any political subdivision of government.

SEC. 55. Section 56028.5 is added to the Education Code, to read:

56028.5. ''Public agency'' means a school district, county office of education, special education local plan area, charter school, or any other public agency under the auspices of the state or any political subdivisions of the state providing special education or related services to individuals with exceptional needs, and includes all public agencies listed in Section 300.22 of Title 34 of the Code of Federal Regulations.

SEC. 56. Section 56140 of the Education Code is amended to read:

56140. County offices shall do all of the following:

(a) Initiate and submit to the superintendent a countywide plan for special education which demonstrates the coordination of all local plans submitted pursuant to Section 56205 and which ensures that all individuals with exceptional needs residing within the county, including those enrolled in alternative education programs, including, but not limited to, alternative schools, charter schools, opportunity schools and classes, community day schools operated by school districts, community schools operated by county offices of education, and juvenile court schools, will have access to appropriate special education programs and related services. However, a county office shall not be required to submit a countywide plan when all the districts within the county elect to submit a single local plan.

(b) Within 45 days, approve or disapprove any proposed local plan submitted by a district or group of districts within the county or counties. Approval shall be based on the capacity of the district or districts to ensure that special education programs and services are provided to all individuals with exceptional needs.

(1) If approved, the county office shall submit the plan with comments and recommendations to the superintendent.

(2) If disapproved, the county office shall return the plan with comments and recommendations to the district. This district may immediately appeal to the superintendent to overrule the county office's disapproval. The superintendent shall make a decision on an appeal within 30 days of receipt of the appeal.

(3) A local plan may not be implemented without approval of the plan by the county office or a decision by the superintendent to overrule the disapproval of the county office.

(c) Participate in the state onsite review of the district's implementation of an approved local plan.

(d) Join with districts in the county which elect to submit a plan or plans pursuant to subdivision (c) of Section 56195.1. Any plan may include more than one county, and districts located in more than one county. Nothing in this subdivision shall be construed to limit the authority of a county office to enter into other agreements with these districts and other districts to provide services relating to the education of individuals with exceptional needs.

(e) For each special education local plan area located within the jurisdiction of the county office of education that has submitted a revised local plan pursuant to Section 56836.03, the county office shall comply with Section 48850, as it relates to individuals with exceptional needs, by making available to agencies that place children in licensed children's institutions a copy of the annual service plan adopted pursuant to paragraph (2) of subdivision (b) of Section 56205.

SEC. 57. Section 56195 of the Education Code is amended to read:

56195. Each special education local plan area, as defined in subdivision (d) of Section 56195.1, shall administer local plans submitted pursuant to Chapter 3 (commencing with Section 56205) and shall administer the allocation of funds pursuant to Chapter 7.2 (commencing with Section 56836).

SEC. 58. Section 56195.1 of the Education Code is amended to read:

56195.1. The governing board of a district shall elect to do one of the following:

(a) If of sufficient size and scope, under standards adopted by the board, submit to the superintendent a local plan for the education of all individuals with exceptional needs residing in the district in accordance with Chapter 3 (commencing with Section 56205).

(b) In conjunction with one or more districts, submit to the superintendent a local plan for the education of individuals with exceptional needs residing in those districts in accordance with Chapter 3 (commencing with Section 56205). The plan shall include, through joint powers agreements or other contractual agreements, all the following:

(1) Provision of a governance structure and any necessary administrative support to implement the plan.

(2) Establishment of a system for determining the responsibility of participating agencies for the education of each individual with exceptional needs residing in the special education local plan area.

(3) Designation of a responsible local agency or alternative administrative entity to perform functions such as the receipt and distribution of funds, provision of administrative support, and coordination of the implementation of the plan. Any participating agency may perform any of these services required by the plan.

(c) Join with the county office, to submit to the superintendent a local plan in accordance with Chapter 3 (commencing with Section 56205) to assure access to special education and services for all individuals with exceptional needs residing in the geographic area served by the plan. The county office shall coordinate the implementation of the plan, unless otherwise specified in the plan. The plan shall include, through contractual agreements, all of the following:

(1) Establishment of a system for determining the responsibility of participating agencies for the education of each individual with exceptional needs residing in the geographical area served by the plan.

(2) Designation of the county office, of a responsible local agency, or of any other administrative entity to perform functions such as the receipt and distribution of funds, provision of administrative support, and coordination of the implementation of the plan. Any participating agency may perform any of these services required by the plan.

(d) The service area covered by the local plan developed under subdivision (a), (b), or (c) shall be known as the special education local plan area.

(e) This section does not limit the authority of a county office and a school district or group of school districts to enter into contractual agreements for services relating to the education of individuals with exceptional needs. Except for instructional personnel service units serving infants, until a special education local plan area adopts a revised local plan approved pursuant to Section 56836.03, the county office of education or school district that reports a unit for funding shall be the agency that employs the personnel who staff the unit, unless the combined unit rate and support service ratio of the nonemploying agency is equal to or lower than that of the employing agency and both agencies agree that the nonemploying agency will report the unit for funding.

(f) A charter school that is deemed a local educational agency for the purposes of special education pursuant to Article 4 (commencing with Section 47640) of Chapter 6 of Part 26.8 shall participate in an approved local plan pursuant to subdivision (a), (b), or (c). A charter school may submit written policies and procedures to the department for approval by the State Board of Education, which establish compliance with the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), and implementing regulations, either individually, pursuant to subdivision (a) or with other charter schools pursuant to subdivision (b). The State Board of Education shall review these policies and procedures, based on the criteria established pursuant to Section 56100. Upon approval by the State Board of Education, these written policies and procedures shall become the local plan.

SEC. 59. Section 56361 of the Education Code is amended to read:

56361. The continuum of program options shall include, but not necessarily be limited to, all of the following or any combination of the following:

(a) Regular education programs consistent with subparagraph (A) of paragraph (5) of subsection (a) of Section 1412 of Title 20 of the United States Code and implementing regulations.

(b) A resource specialist program pursuant to Section 56362.

(c) Designated instruction and services pursuant to Section 56363.

(d) Special classes pursuant to Section 56364.2.

(e) Nonpublic, nonsectarian school services pursuant to Section 56365.

(f) State special schools pursuant to Section 56367.

(g) Instruction in settings other than classrooms where specially designed instruction may occur.

(h) Itinerant instruction in classrooms, resource rooms, and settings other than classrooms where specially designed instruction may occur to the extent required by federal law or regulation.

(i) Instruction using telecommunication, and instruction in the home, in hospitals, and in other institutions to the extent required by federal law or regulation.

SEC. 60. Section 56364.1 of the Education Code is amended to read:

56364.1. Notwithstanding the provisions of Section 56364.2, pupils with low incidence disabilities may receive all or a portion of their instruction in the regular classroom and may also be enrolled in special classes taught by appropriately credentialed teachers who serve these pupils at one or more schoolsites. The instruction shall be provided in a manner which is consistent with the guidelines adopted pursuant to Section 56136 and in accordance with the individualized education program.

SEC. 61. Section 56364.5 of the Education Code is repealed.

SEC. 62. Section 56836.01 of the Education Code is amended to read:

56836.01. Commencing with the 1998–99 fiscal year and each fiscal year thereafter, the administrator of each special education local plan area, in accordance with the local plan approved by the board, shall be responsible for the following:

(a) The fiscal administration of the annual budget plan pursuant to paragraph (1) of subdivision (b) of Section 56205 and annual allocation plan for multidistrict special education local plan areas pursuant to Section 56836.05 for special education programs of school districts and county superintendents of schools composing the special education local plan area.

(b) The allocation of state and federal funds allocated to the special education local plan area for the provision of special education and related services by those entities.

(c) The reporting and accounting requirements prescribed by this part.

SEC. 63. Section 56836.03 of the Education Code is amended to read:

56836.03. (a) On or after January 1, 1998, each special education local plan area shall submit a revised local plan. Each special education

local plan area shall submit its revised local plan not later than the time it is required to submit its local plan pursuant to subdivision (b) of Section 56100 and the revised local plan shall meet the requirements of Chapter 3 (commencing with Section 56205).

(b) Until the board has approved the revised local plan and the special education local plan area begins to operate under the revised local plan, each special education local plan area shall continue to operate under the programmatic, reporting, and accounting requirements prescribed by the State Department of Education for the purposes of Chapter 7 (commencing with Section 56700) as that chapter existed on December 31, 1998. The department shall develop transition guidelines, and, as necessary, transition forms, to facilitate a transition from the reporting and accounting methods required for Chapter 7 (commencing with Section 56700) as that chapter existed on December 31, 1998, and related provisions of this part, to the reporting and accounting methods required for this chapter. Under no circumstances shall the transition guidelines exceed the requirements of the provisions described in paragraphs (1) and (2). The transition guidelines shall, at a minimum, do the following:

(1) Describe the method for accounting for the instructional service personnel units and caseloads, as required by Chapter 7 (commencing with Section 56700) as that chapter existed on December 31, 1998.

(2) Describe the accounting that is required to be made, if any, for the purposes of Sections 56030, 56140, 56156.4, 56361.5, 56362, 56363.3, 56366.2, 56366.3, 56441.5, and 56441.7.

(c) Commencing with the 1997–98 fiscal year, through and including the fiscal year in which equalization among special education local plan areas has been achieved, the board shall not approve any proposal to divide a special education local plan area into two or more units, unless the division has no net impact on state costs for special education; provided, however, that the board may approve a proposal that was initially submitted to the department prior to January 1, 1997.

SEC. 64. Section 56836.155 of the Education Code is amended to read:

56836.155. (a) On or before November 2, 1998, the department, in conjunction with the Office of the Legislative Analyst, shall do the following:

(1) Calculate an ''incidence multiplier'' for each special education local plan area using the definition, methodology, and data provided in the final report submitted by the American Institutes for Research pursuant to Section 67 of Chapter 854 of the Statutes of 1997.

(2) Submit the incidence multiplier for each special education local plan area and supporting data to the Department of Finance.

(b) The Department of Finance shall review the incidence multiplier for each special education local plan area and the supporting data, and report any errors to the department and the Office of the Legislative Analyst for correction.

(c) The Department of Finance shall approve the final incidence multiplier for each special education local plan area by November 23, 1998.

(d) For the 1998–99 fiscal year and each fiscal year thereafter to and including the 2004–05 fiscal year, the superintendent shall perform the following calculation to determine each special education local plan area's adjusted entitlement for the incidence of disabilities:

(1) The incidence multiplier for the special education local plan area shall be multiplied by the statewide target amount per unit of average daily attendance for special education local plan areas determined pursuant to Section 56836.11 for the fiscal year in which the computation is made.

(2) The amount determined pursuant to paragraph (1) shall be added to the statewide target amount per unit of average daily attendance for special education local plan area determined pursuant to Section 56836.11 for the fiscal year in which the computation is made.

(3) Subtract the amount of funding for the special education local plan area determined pursuant to paragraph (1) of subdivision (a) or paragraph (1) of subdivision (b) of Section 56836.08, as appropriate for the fiscal year in which the computation is made, or the statewide target amount per unit of average daily attendance for special education local plan areas determined pursuant to Section 56836.11 for the fiscal year in which the computation is made, whichever is greater, from the amount determined pursuant to paragraph (2). For the purposes of this paragraph for the 2002–03, 2003–04, and 2004–05 fiscal years, the amount, if any, received pursuant to Section 56836.159 shall be excluded from the funding level per unit of average daily attendance for a special education local plan area. If the result is less than zero, the special education local plan area may not receive an adjusted entitlement for the incidence of disabilities.

(4) Multiply the amount determined in paragraph (3) by either the average daily attendance reported for the special education local plan area for the fiscal year in which the computation is made, as adjusted pursuant to subdivision (a) of Section 56836.15, or the average daily attendance reported for the special education local plan area for the prior fiscal year, as adjusted pursuant to subdivision (a) of Section 56826.15, whichever is less.

(5) If there are insufficient funds appropriated in the fiscal year for which the computation is made for the purposes of this section, the

amount received by each special education local plan area shall be prorated.

(e) For the 1997–98 fiscal year, the superintendent shall perform the calculation in paragraphs (1) to (3), inclusive, of paragraph (d) only for the purposes of making the computation in paragraph (1) of subdivision (d) of Section 56836.08, but the special education local plan area may not receive an adjusted entitlement for the incidence of disabilities pursuant to this section for the 1997–98 fiscal year.

SEC. 65. Section 56836.173 of the Education Code is amended 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 recertification of the 2002–03 fiscal year, as certified by the department in July of 2004.

(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. 66. Section 68081 of the Education Code is amended to read:

68081. A student who is enrolled in a state government legislative, executive, or judicial fellowship program administered by the state or the California State University is entitled to resident classification at the California State University during the period of the fellowship.

SEC. 67. Section 7579.1 of the Government Code is amended to read:

7579.1. (a) Prior to the discharge of any disabled child or youth who has an active individualized education program from a public hospital, proprietary hospital, or residential medical facility pursuant to Article 5.5 (commencing with Section 56167) of Chapter 2 of Part 30 of the Education Code, a licensed children's institution or foster family home pursuant to Article 5 (commencing with Section 56155) of Chapter 2 of Part 30 of the Education Code, or a state hospital for the developmentally disabled or mentally disordered, the following shall occur:

(1) The operator of the hospital or medical facility, or the agency that placed the child in the licensed children's institution or foster family home, shall, at least 10 days prior to the discharge of a disabled child or youth, notify in writing the local educational agency in which the special education program for the child is being provided, and the receiving special education local plan area where the child is being transferred, of the impending discharge.

(2) The operator or placing agency, as part of the written notification, shall provide the receiving special education local plan area with a copy of the child's individualized education program, the identity of the individual responsible for representing the interests of the child for educational and related services for the impending placement, and other relevant information about the child that will be useful in implementing the child's individualized education program in the receiving special education local plan area.

(b) Once the disabled child or youth has been discharged, it shall be the responsibility of the receiving local educational agency to ensure that the disabled child or youth receives an appropriate educational placement that commences without delay upon his or her discharge from the hospital, institution, facility, or foster family home in accordance with Section 56325 of the Education Code. Responsibility for the provision of special education rests with the school district of residence of the parent or guardian of the child unless the child is placed in another hospital, institution, facility, or foster family home in which case the responsibility of special education rests with the school district in which

the child resides pursuant to Sections 56156.4, 56156.6, and 56167 of the Education Code.

(c) Special education local plan area directors shall document instances where the procedures in subdivision (a) are not being adhered to and report these instances to the Superintendent of Public Instruction.

SEC. 68. Section 53260 of the Government Code is amended to read:

53260. (a) All contracts of employment between an employee and a local agency employer shall include a provision which provides that regardless of the term of the contract, if the contract is terminated, the maximum cash settlement that an employee may receive shall be an amount equal to the monthly salary of the employee multiplied by the number of months left on the unexpired term of the contract. However, if the unexpired term of the contract is greater than 18 months, the maximum cash settlement shall be an amount equal to the monthly salary of the employee multiplied by 18.

(b) (1) Notwithstanding subdivision (a), if a local agency employer, including an administrator appointed by the Superintendent, terminates its contract of employment with its district superintendent of schools that local agency employer may not provide a cash or noncash settlement to its superintendent in an amount greater than the superintendent's monthly salary multiplied by zero to six if the local agency employer believes, and subsequently confirms, pursuant to an independent audit, that the superintendent has engaged in fraud, misappropriation of funds, or other illegal fiscal practices. The amount of the cash settlement described in this paragraph shall be determined by an administrative law judge after a hearing.

(2) This subdivision applies only to a contract for employment negotiated on or after the effective date of the act that added this subdivision.

(c) The cash settlement formula described in subdivisions (a) and (b) are maximum ceiling on the amounts that may be paid by a local agency employer to an employee and is not a target or example of the amount of the cash settlement to be paid by a local agency employer to an employee in all contract termination cases.

SEC. 69. Section 44 of Chapter 227 of the Statutes of 2003 is amended to read:

Sec. 44. (a) The sum of five hundred seventy million two hundred sixty-three thousand dollars ($570,263,000) is hereby appropriated from the General Fund for the 2004–05 fiscal year in accordance with the following schedule:

(1) The sum of five million seven hundred thirty-eight thousand dollars ($5,738,000) to the State Department of Education for apprentice

programs to be expended consistent with the requirements specified in Item 6110-103-0001 of Section 2.00 of the Budget Act of 2003.

(2) The sum of eighty-three million fifty-six thousand dollars ($83,056,000) to the State Department of Education for supplemental instruction to be expended consistent with the requirements specified in Item 6110-104-0001 of Section 2.00 of the Budget Act of 2003. Of the amount appropriated in this paragraph, eighteen million eight hundred ninety-three thousand dollars ($18,893,000) shall be expended consistent with Schedule (1) of Item 6110-104-0001 of Section 2.00 of the Budget Act of 2003 (Ch. 157, Stats. 2003), three million nine hundred twenty-three thousand dollars ($3,923,000) shall be expended consistent with Schedule (3) of that item, and sixty million two hundred forty thousand dollars ($60,240,000) shall be expended consistent with Schedule (4) of that item.

(3) The sum of fifty million one hundred three thousand dollars ($50,103,000) to the State Department of Education for home-to-school transportation to be expended consistent with the requirements specified in Schedule (1) of Item 6110-111-0001 of Section 2.00 of the Budget Act of 2003.

(4) The sum of three million nine hundred fifty-eight thousand dollars ($3,958,000) to the State Department of Education for the Gifted and Talented Pupil Program to be expended consistent with the requirements specified in Item 6110-124-0001 of Section 2.00 of the Budget Act of 2003.

(5) The sum of ninety-five million three hundred ninety-seven thousand dollars ($95,397,000) to the State Department of Education for Targeted Improvement Block Grant to be expended consistent with the requirements specified in Item 6110-132-0001 of Section 2.00 of the Budget Act of 2003.

(6) The sum of forty million nine hundred twenty-five thousand dollars ($40,925,000) to the State Department of Education for adult education to be expended consistent with the requirements specified in Schedule (.5) of Item 6110-156-0001 of Section 2.00 of the Budget Act of 2003.

(7) The sum of four million four hundred fifty-one thousand dollars ($4,451,000) to the State Department of Education for community day schools to be expended consistent with the requirements specified in Item 6110-190-0001 of Section 2.00 of the Budget Act of 2003.

(8) The sum of four million six hundred thirty-five thousand dollars ($4,635,000) to the State Department of Education for categorical programs for charter schools to be expended consistent with the requirements specified in Item 6110-211-0001 of Section 2.00 of the Budget Act of 2003.

(9) The sum of eighty-two million dollars ($82,000,000) to the State Department of Education for the Carl Washington School Safety Block Grant to be expended consistent with the requirements specified in Item 6110-228-0001 of Section 2.00 of the Budget Act of 2003.

(10) One hundred fifty million dollars ($150,000,000) to the Board of Governors of the California Community Colleges for apportionments, to be expended in accordance with the requirements specified in Item 6870-101-0001 of Section 2.00 of the Budget Act of 2003.

(11) Fifty million dollars ($50,000,000) to the Board of Governors of the California Community Colleges for the Partnership for Excellence, to be expended in accordance with the requirements specified in Item 6870-101-0001 of Section 2.00 of the Budget Act of 2003.

(b) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriations made by paragraphs (1) to (9), inclusive, of subdivision (a) shall be deemed to be ''General Fund revenues appropriated for school districts,'' as defined in subdivision (c) of Section 41202 of the Education Code, for the 2004–05 fiscal year, and included within the ''total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B,'' as defined in subdivision (e) of Section 41202 of the Education Code for the 2004–05 fiscal year.

(c) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by paragraphs (10) and (11) of subdivision (a) shall be deemed to be ''General Fund revenues appropriated for community college districts,'' as defined in subdivision (d) of Section 41202 of the Education Code, for the 2004–05 fiscal year, and included within the ''total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B,'' as defined in subdivision (e) of Section 41202 of the Education Code, for the 2004–05 fiscal year.

SEC. 70. Item 6110-104-0001 of Section 2.00 of Chapter 208 of the Statutes of 2004 is amended to read:

6110-104-0001--For local assistance, Department of Education (Proposition 98), Program 10.10.011–School Apportionments—Remedial Supplemental Instruction Programs, for transfer to Section A of the State School Fund, for supplemental instruction and remedial programs 277,862,000

Schedule:

1. 10.10.011.008—School Apportionments, for Supplemental Instruction, Remedial, Grades 7–12 for the purposes of Section 37252 of the Education Code 157,438,000
2. 10.10.011.009—School Apportionments, for Supplemental Instruction, Retained, or Recommended for Retention, Grades 2–9, for the purposes of Section 37252.2 of the Education Code, as applicable . . 38,020,000
3. 10.10.011.010—School Apportionments, for Supplemental Instruction, Low STAR, or at–risk, Grades 2–6, for the purposes of Section 37252.8 of the Education Code, as applicable 14,462,000
4. 10.10.011.011—School Apportionments, for Supplemental Instruction, Core Academic, Grades K–12, for the purposes of Section 37253 of the Education Code . . . 67,942,000

Provisions:

1. Notwithstanding any other provision of law, for the 2004–05 fiscal year the Superintendent of Public Instruction shall allocate a minimum of $7,573 for supplemental summer school programs in each school district for which the prior fiscal year enrollment was less than 500 and that, in the 2004–05 fiscal year, offers at least 1,500 hours of supplemental summer school instruction. A small school district, as described above, that offers less than 1,500 hours of supplemental summer school offerings shall receive a proportionate reduction in its allocation. For the purpose of this provision,

supplemental summer school programs shall be defined as programs authorized under paragraph (2) of subdivision (f) of Section 42239 of the Education Code as it read on July 1, 1999.

2. Notwithstanding any other provision of law, for the 2004–05 fiscal year, the maximum reimbursement to a school district or charter school for the program listed in Schedule (4) shall not exceed 5 percent of the district or charter school's enrollment multiplied by 120 hours, multiplied by the hourly rate for the 2004–05 fiscal year.
4. Notwithstanding any other provision of law, the rate of reimbursement shall be $3.53 per hour of supplemental instruction.
5. Notwithstanding any other provision of law, if the funds in this item are insufficient to fund otherwise valid claims, the superintendent shall adjust the rates to conform to available funds.
6. Of the funds appropriated in this item, $8,560,000 is for the purpose of providing a cost–of–living adjustment of 2.41 percent. Additionally, $3,342,000 is for the purpose of providing for increases in average daily attendance at a rate of 0.95 percent for supplemental instruction and remedial programs, in lieu of the amount that would otherwise be provided pursuant to any other provision of law.
7. Funds contained in Schedules (1) and (2) of this item shall first be used to offset any state–mandated reimbursable costs that may otherwise be claimed through the state mandates reimbursement process of implementing Sections 37252 and 37252.2 of the Education Code. Local education agencies accepting funding from these schedules shall reduce their estimated and actual mandate reimbursement claims by the amount of funding provided to them from these schedules.
8. Notwithstanding any other provision of law, an additional $85,866,000 in expenditures for this item has been deferred until the 2005–06 fiscal year.

SEC. 71. Notwithstanding any other law, any unexpended funds from Item 6110-107-0001 of Section 2.00 of the Budget Act of 2003 (Ch. 157, Stats. 2003) shall remain available to the County Office Fiscal Crisis and Management Assistance Team (FCMAT) for the following purposes:

(a) To provide an additional annual written status report assessing the progress of the Oakland Unified School District in implementing the

improvement plan developed pursuant to Chapter 14 of the Statutes of 2003. The reporting requirements that applied to the status reports required by subdivision (c) of Section 7 of Chapter 14 of the Statutes of 2003 apply to the additional report authorized by this subdivision.

(b) To provide an additional annual written status report assessing the progress of the West Fresno Elementary School District in implementing the improvement plan developed pursuant to Chapter 1 of the Statutes of 2003. The reporting requirements that applied to the status reports required by subdivision (c) of Section 5 of Chapter 1 of the Statutes of 2003 apply to the additional report authorized by this subdivision.

(c) Any other activities upon approval of both the Superintendent of Public Instruction and the Director of Finance.

SEC. 72. 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. 73. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that the educational programs affected by this act are properly implemented, pursuant to the clarifying, technical, and other changes made by this act, it is necessary that this act take effect immediately.

CHAPTER 897

An act to amend Section 8208 of, and to add Article 8.5 (commencing with Section 8245) to Chapter 2 of Part 6 of, the Education Code, relating to child development.

[Approved by Governor September 29, 2004. Filed with
Secretary of State September 29, 2004.]

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

SECTION 1. It is the intent of the Legislature to improve and ensure school readiness of children from state-subsidized families who receive child care and development services in family child care homes. For the past three decades, the family child care home education network, also known as the family child care home system, contracted through the State Department of Education, has provided quality, education-oriented, child development programs. It is the intent of the Legislature in enacting this act, to clarify and codify the family child care home education network and ensure that the State Department of Education's desired results system of outcome measures apply to the network.

SEC. 2. Section 8208 of the Education Code is amended to read:

8208. As used in this chapter:

(a) ''Alternative payments'' includes payments that are made by one child care agency to another agency or child care provider for the provision of child care and development services, and payments that are made by an agency to a parent for the parent's purchase of child care and development services.

(b) ''Alternative payment program'' means a local government agency or nonprofit organization that has contracted with the department pursuant to Section 8220.2 to provide alternative payments and to provide support services to parents and providers.

(c) ''Applicant or contracting agency'' means a school district, community college district, college or university, county superintendent of schools, county, city, public agency, private nontax-exempt agency, private tax-exempt agency, or other entity that is authorized to establish, maintain, or operate services pursuant to this chapter. Private agencies and parent cooperatives, duly licensed by law, shall receive the same consideration as any other authorized entity with no loss of parental decisionmaking prerogatives as consistent with the provisions of this chapter.

(d) ''Assigned reimbursement rate'' is that rate established by the contract with the agency and is derived by dividing the total dollar amount of the contract by the minimum child day of average daily enrollment level of service required.

(e) ''Attendance'' means the number of children present at a child care and development facility. ''Attendance,'' for the purposes of reimbursement, includes excused absences by children because of illness, quarantine, illness or quarantine of their parent, family

emergency, or to spend time with a parent or other relative as required by a court of law or that is clearly in the best interest of the child.

(f) ''Capital outlay'' means the amount paid for the renovation and repair of child care and development facilities to comply with state and local health and safety standards, and the amount paid for the state purchase of relocatable child care and development facilities for lease to qualifying contracting agencies.

(g) ''Caregiver'' means a person who provides direct care, supervision, and guidance to children in a child care and development facility.

(h) ''Child care and development facility'' means any residence or building or part thereof in which child care and development services are provided.

(i) ''Child care and development programs'' means those programs that offer a full range of services for children from infancy to 13 years of age for any part of a day, by a public or private agency, in centers and family child care homes. These programs include, but are not limited to, all of the following:

(1) Campus child care and development.

(2) General child care and development.

(3) Migrant child care and development.

(4) Child care provided by the California School Age Families Education Program (Article 7.1 (commencing with Section 54740) of Chapter 9 of Part 29).

(5) State preschool.

(6) Resource and referral.

(7) Child care and development services for children with special needs.

(8) Family child care home education network.

(9) Alternative payment.

(10) Child abuse protection and prevention services.

(11) Schoolage community child care.

(j) ''Child care and development services'' means those services designed to meet a wide variety of needs of children and their families, while their parents or guardians are working, in training, seeking employment, incapacitated, or in need of respite. These services may include direct care and supervision, instructional activities, resource and referral programs, and alternative payment arrangements.

(k) ''Children at risk of abuse, neglect, or exploitation'' means children who are so identified in a written referral from a legal, medical, or social service agency, or emergency shelter.

(*l*) ''Children with exceptional needs'' means infants and toddlers, from birth to 36 months of age, inclusive, who have been determined eligible for early intervention services pursuant to the California Early

Intervention Services Act (Title 14 (commencing with Section 95000) of the Government Code) and its implementing regulations, and children 3 years of age and older who have been determined to be eligible for special education and related services by an individualized education program team according to the special education requirements contained in Part 30 (commencing with Section 56000), and meeting eligibility criteria described in Section 56026 and Sections 56333 to 56338, inclusive, and Sections 3030 and 3031 of Title 5 of the California Code of Regulations. These children shall have an active individualized education program or individualized family service plan, and be receiving early intervention services or appropriate special education and services. These children, ages birth to 21 years, inclusive, may be autistic, developmentally disabled, hearing impaired, speech impaired, visually impaired, seriously emotionally disturbed, orthopedically impaired, otherwise health impaired, multihandicapped, or children with specific learning disabilities, who require the special attention of adults in a child care setting.

(m) ''Closedown costs'' means reimbursements for all approved activities associated with the closing of operations at the end of each growing season for migrant child development programs only.

(n) ''Cost'' includes, but is not limited to, expenditures that are related to the operation of child care and development programs. ''Cost'' may include a reasonable amount for state and local contributions to employee benefits, including approved retirement programs, agency administration, and any other reasonable program operational costs. ''Cost'' may also include amounts for licensable facilities in the community served by the program, including lease payments or depreciation, downpayments, and payments of principal and interest on loans incurred to acquire, rehabilitate, or construct licensable facilities, but these costs shall not exceed fair market rents existing in the community in which the facility is located. ''Reasonable and necessary costs'' are costs that, in nature and amount, do not exceed what an ordinary prudent person would incur in the conduct of a competitive business.

(o) ''Elementary school,'' as contained in Section 425 of Title 20 of the United States Code (the National Defense Education Act of 1958, Public Law 85-864, as amended), includes early childhood education programs and all child development programs, for the purpose of the cancellation provisions of loans to students in institutions of higher learning.

(p) ''Family child care home education network'' means an entity organized under law that contracts with the department pursuant to Section 8245 to make payments to licensed family child care home providers and to provide educational and support services to those

providers and to children and families eligible for state-subsidized child care and development services. A family child care home education network may also be referred to as a family child care home system.

(q) ''Health services'' include, but are not limited to, all of the following:

(1) Referral, whenever possible, to appropriate health care providers able to provide continuity of medical care.

(2) Health screening and health treatment, including a full range of immunization recorded on the appropriate state immunization form to the extent provided by the Medi-Cal Act (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code) and the Child Health and Disability Prevention Program (Article 6 (commencing with Section 124025) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code), but only to the extent that ongoing care cannot be obtained utilizing community resources.

(3) Health education and training for children, parents, staff, and providers.

(4) Followup treatment through referral to appropriate health care agencies or individual health care professionals.

(r) ''Higher educational institutions'' means the Regents of the University of California, the Trustees of the California State University, the Board of Governors of the California Community Colleges, and the governing bodies of any accredited private nonprofit institution of postsecondary education.

(s) ''Intergenerational staff'' means persons of various generations.

(t) ''Limited-English-speaking-proficient and non-English-speaking-proficient children'' means children who are unable to benefit fully from an English-only child care and development program as a result of either of the following:

(1) Having used a language other than English when they first began to speak.

(2) Having a language other than English predominantly or exclusively spoken at home.

(u) ''Parent'' means a biological parent, stepparent, adoptive parent, foster parent, caretaker relative, or any other adult living with a child who has responsibility for the care and welfare of the child.

(v) ''Program director'' means a person who, pursuant to Sections 8244 and 8360.1, is qualified to serve as a program director.

(w) ''Proprietary child care agency'' means an organization or facility providing child care, which is operated for profit.

(x) ''Resource and referral programs'' means programs that provide information to parents, including referrals and coordination of community resources for parents and public or private providers of care. Services frequently include, but are not limited to: technical assistance

for providers, toy-lending libraries, equipment-lending libraries, toy- and equipment-lending libraries, staff development programs, health and nutrition education, and referrals to social services.

(y) ''Severely disabled children'' are children with exceptional needs from birth to 21 years of age, inclusive, who require intensive instruction and training in programs serving pupils with the following profound disabilities: autism, blindness, deafness, severe orthopedic impairments, serious emotional disturbances, or severe mental retardation. ''Severely disabled children'' also include those individuals who would have been eligible for enrollment in a developmental center for handicapped pupils under Chapter 6 (commencing with Section 56800) of Part 30 as it read on January 1, 1980.

(z) ''Short-term respite child care'' means child care service to assist families whose children have been identified through written referral from a legal, medical, or social service agency, or emergency shelter as being neglected, abused, exploited, or homeless, or at risk of being neglected, abused, exploited, or homeless. Child care is provided for less than 24 hours per day in child care centers, treatment centers for abusive parents, family child care homes, or in the child's own home.

(aa) (1) ''Site supervisor'' means a person who, regardless of his or her title, has operational program responsibility for a child care and development program at a single site. A site supervisor shall hold a permit issued by the Commission on Teacher Credentialing that authorizes supervision of a child care and development program operating in a single site. The Superintendent of Public Instruction may waive the requirements of this subdivision if the superintendent determines that the existence of compelling need is appropriately documented.

(2) In respect to state preschool programs, a site supervisor may qualify under any of the provisions in this subdivision, or may qualify by holding an administrative credential or an administrative services credential. A person who meets the qualifications of a site supervisor under both Section 8244 and subdivision (e) of Section 8360.1 is also qualified under this subdivision.

(ab) ''Standard reimbursement rate'' means that rate established by the Superintendent of Public Instruction pursuant to Section 8265.

(ac) ''Startup costs'' means those expenses an agency incurs in the process of opening a new or additional facility prior to the full enrollment of children.

(ad) ''State preschool services'' means part-day educational programs for low-income or otherwise disadvantaged prekindergarten-age children.

(ae) ''Support services'' means those services that, when combined with child care and development services, help promote the healthy

physical, mental, social, and emotional growth of children. Support services include, but are not limited to: protective services, parent training, provider and staff training, transportation, parent and child counseling, child development resource and referral services, and child placement counseling.

(af) ''Teacher'' means a person with the appropriate permit issued by the Commission on Teacher Credentialing who provides program supervision and instruction that includes supervision of a number of aides, volunteers, and groups of children.

(ag) ''Underserved area'' means a county or subcounty area, including, but not limited to, school districts, census tracts, or ZIP Code areas, where the ratio of publicly subsidized child care and development program services to the need for these services is low, as determined by the Superintendent of Public Instruction.

(ah) ''Workday'' means the time that the parent requires temporary care for a child for any of the following reasons:

(1) To undertake training in preparation for a job.

(2) To undertake or retain a job.

(3) To undertake other activities that are essential to maintaining or improving the social and economic function of the family, are beneficial to the community, or are required because of health problems in the family.

SEC. 2.5. Section 8208 of the Education Code is amended to read:

8208. As used in this chapter:

(a) ''Alternative payments'' includes payments that are made by one child care agency to another agency or child care provider for the provision of child care and development services, and payments that are made by an agency to a parent for the parent's purchase of child care and development services.

(b) ''Alternative payment program'' means a local government agency or nonprofit organization that has contracted with the department pursuant to Section 8220.2 to provide alternative payments and to provide support services to parents and providers.

(c) ''Applicant or contracting agency'' means a school district, community college district, college or university, county superintendent of schools, county, city, public agency, private nontax-exempt agency, private tax-exempt agency, or other entity that is authorized to establish, maintain, or operate services pursuant to this chapter. Private agencies and parent cooperatives, duly licensed by law, shall receive the same consideration as any other authorized entity with no loss of parental decisionmaking prerogatives as consistent with the provisions of this chapter.

(d) ''Assigned reimbursement rate'' is that rate established by the contract with the agency and is derived by dividing the total dollar

amount of the contract by the minimum child day of average daily enrollment level of service required.

(e) ''Attendance'' means the number of children present at a child care and development facility. ''Attendance,'' for the purposes of reimbursement, includes excused absences by children because of illness, quarantine, illness or quarantine of their parent, family emergency, or to spend time with a parent or other relative as required by a court of law or that is clearly in the best interest of the child.

(f) ''Capital outlay'' means the amount paid for the renovation and repair of child care and development facilities to comply with state and local health and safety standards, and the amount paid for the state purchase of relocatable child care and development facilities for lease to qualifying contracting agencies.

(g) ''Caregiver'' means a person who provides direct care, supervision, and guidance to children in a child care and development facility.

(h) ''Child care and development facility'' means any residence or building or part thereof in which child care and development services are provided.

(i) ''Child care and development programs'' means those programs that offer a full range of services for children from infancy to 13 years of age for any part of a day, by a public or private agency, in centers and family child care homes. These programs include, but are not limited to, all of the following:

(1) Campus child care and development.

(2) General child care and development.

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(7) Child care and development services for children with special needs.

(8) Family child care home education network.

(9) Alternative payment.

(10) Child abuse protection and prevention services.

(11) Schoolage community child care.

(j) ''Child care and development services'' means those services designed to meet a wide variety of needs of children and their families, while their parents or guardians are working, in training, seeking employment, incapacitated, or in need of respite. These services may include direct care and supervision, instructional activities, resource and referral programs, and alternative payment arrangements.

(k) ''Children at risk of abuse, neglect, or exploitation'' means children who are so identified in a written referral from a legal, medical, or social service agency, or emergency shelter.

(*l*) ''Children with exceptional needs'' means infants and toddlers, from birth to 36 months of age, inclusive, who have been determined eligible for early intervention services pursuant to the California Early Intervention Services Act (Title 14 (commencing with Section 95000) of the Government Code) and its implementing regulations, and children 3 years of age and older who have been determined to be eligible for special education and related services by an individualized education program team according to the special education requirements contained in Part 30 (commencing with Section 56000), and meeting eligibility criteria described in Section 56026 and Sections 56333 to 56338, inclusive, and Sections 3030 and 3031 of Title 5 of the California Code of Regulations. These children shall have an active individualized education program or individualized family service plan, and be receiving early intervention services or appropriate special education and services. These children, ages birth to 21 years, inclusive, may be autistic, developmentally disabled, hearing impaired, speech impaired, visually impaired, seriously emotionally disturbed, orthopedically impaired, otherwise health impaired, multihandicapped, or children with specific learning disabilities, who require the special attention of adults in a child care setting.

(m) ''Closedown costs'' means reimbursements for all approved activities associated with the closing of operations at the end of each growing season for migrant child development programs only.

(n) ''Cost'' includes, but is not limited to, expenditures that are related to the operation of child care and development programs. ''Cost'' may include a reasonable amount for state and local contributions to employee benefits, including approved retirement programs, agency administration, and any other reasonable program operational costs. ''Cost'' may also include amounts for licensable facilities in the community served by the program, including lease payments or depreciation, downpayments, and payments of principal and interest on loans incurred to acquire, rehabilitate, or construct licensable facilities, but these costs shall not exceed fair market rents existing in the community in which the facility is located. ''Reasonable and necessary costs'' are costs that, in nature and amount, do not exceed what an ordinary prudent person would incur in the conduct of a competitive business.

(o) ''Elementary school,'' as contained in Section 425 of Title 20 of the United States Code (the National Defense Education Act of 1958, Public Law 85-864, as amended), includes early childhood education programs and all child development programs, for the purpose of the

cancellation provisions of loans to students in institutions of higher learning.

(p) ''Family child care home education network'' means an entity organized under law that contracts with the department pursuant to Section 8245 to make payments to licensed family child care home providers and to provide educational and support services to those providers and to children and families eligible for state-subsidized child care and development services. A family child care home education network may also be referred to as a family child care home system.

(q) ''Health services'' include, but are not limited to, all of the following:

(1) Referral, whenever possible, to appropriate health care providers able to provide continuity of medical care.

(2) Health screening and health treatment, including a full range of immunization recorded on the appropriate state immunization form to the extent provided by the Medi-Cal Act (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code) and the Child Health and Disability Prevention Program (Article 6 (commencing with Section 124025) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code), but only to the extent that ongoing care cannot be obtained utilizing community resources.

(3) Health education and training for children, parents, staff, and providers.

(4) Followup treatment through referral to appropriate health care agencies or individual health care professionals.

(r) ''Higher educational institutions'' means the Regents of the University of California, the Trustees of the California State University, the Board of Governors of the California Community Colleges, and the governing bodies of any accredited private nonprofit institution of postsecondary education.

(s) ''Intergenerational staff'' means persons of various generations.

(t) ''Limited-English-speaking-proficient and non-English-speaking-proficient children'' means children who are unable to benefit fully from an English-only child care and development program as a result of either of the following:

(1) Having used a language other than English when they first began to speak.

(2) Having a language other than English predominantly or exclusively spoken at home.

(u) ''Parent'' means a biological parent, stepparent, adoptive parent, foster parent, caretaker relative, or any other adult living with a child who has responsibility for the care and welfare of the child.

(v) ''Program director'' means a person who, pursuant to Sections 8244 and 8360.1, is qualified to serve as a program director.

(w) ''Proprietary child care agency'' means an organization or facility providing child care, which is operated for profit.

(x) ''Resource and referral programs'' means programs that provide information to parents, including referrals and coordination of community resources for parents and public or private providers of care. Services frequently include, but are not limited to: technical assistance for providers, toy-lending libraries, equipment-lending libraries, toy- and equipment-lending libraries, staff development programs, health and nutrition education, and referrals to social services.

(y) ''Severely disabled children'' are children with exceptional needs from birth to 21 years of age, inclusive, who require intensive instruction and training in programs serving pupils with the following profound disabilities: autism, blindness, deafness, severe orthopedic impairments, serious emotional disturbances, or severe mental retardation. ''Severely disabled children'' also include those individuals who would have been eligible for enrollment in a developmental center for handicapped pupils under Chapter 6 (commencing with Section 56800) of Part 30 as it read on January 1, 1980.

(z) ''Short-term respite child care'' means child care service to assist families whose children have been identified through written referral from a legal, medical, or social service agency, or emergency shelter as being neglected, abused, exploited, or homeless, or at risk of being neglected, abused, exploited, or homeless. Child care is provided for less than 24 hours per day in child care centers, treatment centers for abusive parents, family child care homes, or in the child's own home.

(aa) (1) ''Site supervisor'' means a person who, regardless of his or her title, has operational program responsibility for a child care and development program at a single site. A site supervisor shall hold a permit issued by the Commission on Teacher Credentialing that authorizes supervision of a child care and development program operating in a single site. The Superintendent of Public Instruction may waive the requirements of this subdivision if the superintendent determines that the existence of compelling need is appropriately documented.

(2) In respect to state preschool programs, a site supervisor may qualify under any of the provisions in this subdivision, or may qualify by holding an administrative credential or an administrative services credential. A person who meets the qualifications of a site supervisor under both Section 8244 and subdivision (e) of Section 8360.1 is also qualified under this subdivision.

(ab) ''Standard reimbursement rate'' means that rate established by the Superintendent of Public Instruction pursuant to Section 8265.

(ac) ''Startup costs'' means those expenses an agency incurs in the process of opening a new or additional facility prior to the full enrollment of children.

(ad) ''State preschool services'' means part-day educational programs for low-income or otherwise disadvantaged prekindergarten-age children.

(ae) ''Support services'' means those services that, when combined with child care and development services, help promote the healthy physical, mental, social, and emotional growth of children. Support services include, but are not limited to: protective services, parent training, provider and staff training, transportation, parent and child counseling, child development resource and referral services, and child placement counseling.

(af) ''Teacher'' means a person with the appropriate permit issued by the Commission on Teacher Credentialing who provides program supervision and instruction that includes supervision of a number of aides, volunteers, and groups of children.

(ag) ''Underserved area'' means a county or subcounty area, including, but not limited to, school districts, census tracts, or ZIP Code areas, where the ratio of publicly subsidized child care and development program services to the need for these services is low, as determined by the Superintendent of Public Instruction.

(ah) ''Workday'' means the time that the parent requires temporary care for a child for any of the following reasons:

(1) To undertake training in preparation for a job.

(2) To undertake or retain a job.

(3) To undertake other activities that are essential to maintaining or improving the social and economic function of the family, are beneficial to the community, or are required because of health problems in the family.

SEC. 3. Article 8.5 (commencing with Section 8245) is added to Chapter 2 of Part 6 of the Education Code, to read:

Article 8.5. Family Child Care Home Education Networks

8245. (a) The Superintendent of Public Instruction, with funds appropriated for this purpose, shall contract with entities organized under law to operate family child care home education networks that support educational objectives for children in licensed family child care homes that serve families eligible for subsidized child care.

(b) Family child care home education network programs shall include, but are not limited to, all of the following:

(1) Age and developmentally appropriate activities for children.

(2) Care and supervision of children.

(3) Parenting education.

(4) Identification of child and family social or health needs and referral of the child or the family to the appropriate social or health services.

(5) Nutrition.

(6) Training and support for the family child care home education network's family home providers and staff.

(7) Assessment of each family child care home provider to ensure that services are of high quality and are educationally and developmentally appropriate.

(8) Developmental profiles for children enrolled in the program.

(9) Parent involvement.

8246. Each family child care home education network contractor, in addition to the requirements set forth in subdivision (b) of Section 8245, shall do all of the following:

(a) Recruit, enroll, and certify eligible families.

(b) Recruit, train, support, and reimburse licensed family home providers.

(c) Collect family fees in accordance with contract requirements.

(d) Assess, according to standards set by the department, the educational quality of the program offered in each family child care home in the network.

(e) Assure that a developmental profile is completed for each child based upon observations of network staff, in consultation with the provider.

(f) Monitor requirements, including quality standards, and conduct periodic assessments of program quality in each family child care home affiliated with the network.

(g) Ensure that basic health and nutrition requirements are met.

(h) Provide data and reporting in accordance with contract requirements.

8247. This article does not impose any new requirement on a family child care home education network, nor does this article require any increase in reimbursement rates. This article does not require the department to modify its contracting procedure that was in effect for a family child care home education network prior to January 1, 2005.

SEC. 4. Section 2.5 of this bill incorporates amendments to Section 8208 of the Education Code proposed by both this bill and AB 2525. 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 8208 of the Education Code, and (3) this bill is enacted after AB 2525, in which case Section 8208 of the Education Code, as amended by AB 2525, shall remain operative only until the operative date of this bill, at

which time Section 2.5 of this bill shall become operative, and Section 2 of this bill shall not become operative.

CHAPTER 898

An act to amend Section 17078.27 of the Education Code, relating to school facilities.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 2004.]

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

SECTION 1. Section 17078.27 of the Education Code is amended to read:

17078.27. (a) Upon completion of the preliminary process authorized pursuant to this article, and when a preliminary applicant has complied with the conditions set forth in this chapter for a final apportionment, including, but not limited to, Section 17070.50, the board shall adjust the preliminary apportionment as set forth in subdivision (b) and as necessary to reflect the current eligible grant amounts for final apportionments pursuant to this chapter consistent with regulations adopted pursuant to subdivision (c) of Section 17078.24. The board shall then convert the adjusted preliminary apportionment to a final apportionment and proceed to completion of the project in the same manner as for any project funded under provisions of this chapter other than this article.

(b) The board may adjust for cost increases only if uncommitted funds reserved expressly for the purposes of this article remain available for those purposes.

(c) For purposes of calculating enrollment to determine eligibility for a final apportionment for a project funded from the Kindergarten-University Public Education Facilities Bond Act of 2002, as set forth in Part 68.1 (commencing with Section 100600), an applicant may use one of the following methods as an alternative to the method provided in subdivision (a) of Section 17071.75:

(1) The current year enrollment as recorded on the cohort survival enrollment projection system described in subdivision (a) of Section 17071.75, for the year in which the application for the final apportionment is submitted.

(2) (A) If eligibility for the preliminary apportionment was calculated pursuant to Section 17071.76, the current year or five-year projected enrollment as recorded on a cohort survival enrollment

projection system, developed and approved by the board, that uses pupil residence in the high school attendance area, for the year in which the application for the final apportionment is submitted.

(B) A district that uses the method described in this paragraph to calculate enrollment shall also use this method to calculate enrollment for all applications it submits for final apportionments for projects for which preliminary apportionments were approved from the same bond authorization.

CHAPTER 899

An act to add Section 41207.5 to, and to add Article 1.5 (commencing with Section 17592.70) to Chapter 5 of Part 10.5 of, the Education Code, relating to school facilities, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 2004.]

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

SECTION 1. Article 1.5 (commencing with Section 17592.70) is added to Chapter 5 of Part 10.5 of the Education Code, to read:

Article 1.5. School Assessments of Buildings and Emergency Repairs Grant Program

17592.70. (a) There is hereby established the School Facilities Needs Assessment Grant Program with the purpose to provide for a one-time comprehensive assessment of school facilities needs. The grant program shall be administered by the State Allocation Board.

(b) (1) The grants shall be awarded to school districts on behalf of schoolsites ranked in deciles 1 to 3, inclusive, on the Academic Performance Index, pursuant to Section 52056, based on the 2003 base Academic Performance Index score for each school newly constructed prior to January 1, 2000.

(2) For purposes of this section, schools ranked in deciles 1 to 3, inclusive, on the 2003 base Academic Performance Index (API) shall include any schools determined by the State Department of Education to meet either of the following:

(A) The school meets all of the following criteria:

(i) Does not have a valid base API score for 2003.

(ii) Is operating in fiscal year 2004–05 and was operating in fiscal year 2003–04 during the Standardized Testing and Reporting (STAR) Program testing period.

(iii) Has a valid base API score for 2002 that was ranked in deciles 1 to 3, inclusive, in that year.

(B) The school has an estimated base API score for 2003 that would be in deciles 1 to 3, inclusive.

(3) The State Department of Education shall estimate an API score for any school meeting the criteria of clauses (i) and (ii) of subparagraph (A) of paragraph (2) and not meeting the criteria of clause (iii) of subparagraph (A) of that paragraph, using available testing scores and any weighting or corrective factors it deems appropriate. The department shall provide those API scores to the Office of Public School Construction and post them on its Web site within 30 days of the enactment of this section.

(c) The board shall allocate funds pursuant to subdivision (b) to school districts with jurisdiction over eligible schoolsites, based on ten dollars ($10) per pupil enrolled in the eligible school as of October 2003, with a minimum allocation of seven thousand five hundred dollars ($7,500) for each schoolsite.

(d) As a condition of receiving funds pursuant to this section, school districts shall do all of the following:

(1) Use the funds to develop a comprehensive needs assessment of all schoolsites eligible for grants pursuant to subdivision (b). The assessment shall contain, at a minimum, all of the following information for each schoolsite:

(A) The year each building that is currently used for instructional purposes was constructed.

(B) The year, if any, each building that is currently used for instructional purposes was last modernized.

(C) The pupil capacity of the school.

(D) The number of pupils enrolled in the school.

(E) The density of the school campus measured in pupils per acre.

(F) The total number of classrooms at the school.

(G) The age and number of portable classrooms at the school.

(H) Whether the school is operating on a multitrack, year-round calendar, and, if so, what type.

(I) Whether the school has a cafeteria, or an auditorium or other space used for pupil eating and not for class instruction.

(J) The useful life remaining of all major building systems for each structure housing instructional space, including, but not limited to, sewer, water, gas, electrical, roofing, and fire and life safety protection.

(K) The estimated costs for five years necessary to maintain functionality of each instructional space to maintain health, safety, and

suitable learning environment, as applicable, including classroom, counseling areas, administrative space, libraries, gymnasiums, multipurpose and dining space, and the accessibility to those spaces.

(L) A list of necessary repairs.

(2) Use the data currently filed with the state as part of the process of applying for and obtaining modernization or construction funds for school facilities, or information that is available in the California Basic Education Data System for the element required in subparagraphs (D), (E), (F), and (G) of paragraph (1).

(3) Use the assessment as the baseline for the facilities inspection system required pursuant to subdivision (e) of Section 17070.75.

(4) Provide the results of the assessment to the Office of Public School Construction, including a report on the expenditures made in performing the assessment. It is the intent of the Legislature that the assessments be completed as soon as possible, but not later than January 1, 2006.

(5) If a school district does not need the full amount of the allocation it receives pursuant to this section, the school district shall expend the remaining funds for making facilities repairs identified in its needs assessment. The school district shall report to the Office of Public School Construction on the repairs completed pursuant to this paragraph and the cost of the repairs.

(6) Submit to the Office of Public School Construction an interim report regarding the progress made by the school district in completing the assessments of all eligible schools.

17592.71. (a) There is hereby established in the State Treasury the School Facilities Emergency Repair Account. The State Allocation Board shall administer the account.

(b) Commencing with the 2005–06 fiscal year, an amount of moneys shall be transferred in the annual Budget Act from the Proposition 98 Reversion Account to the School Facilities Emergency Repair Account equaling 50 percent of the unappropriated balance of the Proposition 98 Reversion Account or one hundred million dollars ($100,000,000), whichever amount is greater. Moneys transferred pursuant to this subdivision shall be used for the purpose of addressing emergency facilities needs pursuant to Section 17592.72.

(c) The Legislature may transfer to the School Facilities Emergency Repair Account other one-time Proposition 98 funds, except funds specified pursuant to Section 41207. Donations by private entities shall be deposited in the account and, for tax purposes, be treated as otherwise provided by law.

(d) Funds shall be transferred pursuant to this section until a total of eight hundred million dollars ($800,000,000) has been disbursed from the School Facilities Emergency Repair Account.

17592.72. (a) All moneys in the School Facilities Emergency Repair Account are available for reimbursement to schools ranked in deciles 1 to 3, inclusive, on the Academic Performance Index, pursuant to Section 52056, based on the 2003 base Academic Performance Index score for each school, as defined in subdivision (b) of Section 17592.70, to meet the repair costs of the school district projects that meet the criteria specified in subdivisions (c) and (d) and as approved by the State Allocation Board.

(b) (1) It is the intent of the Legislature that each school district exercise due diligence in the administration of deferred maintenance and regular maintenance in order to avoid the occurrence of emergency repairs.

(2) Funds made available pursuant to this article shall supplement, not supplant, existing funds available for maintenance of school facilities.

(3) The board is authorized to deny future funding pursuant to this article to a school district if the board determines that there is a pattern of failure to exercise due diligence pursuant to paragraph (1) or supplantation. If the board finds a pattern of failure to exercise due diligence, the board shall notify the county superintendent of schools in which the school district is located.

(c) (1) For purposes of this article, ''emergency facilities needs'' means structures or systems that are in a condition that poses a threat to the health and safety of pupils or staff while at school. These projects may include, but are not limited to, the following types of facility repair or replacements of:

(A) Gas leaks.

(B) Nonfunctioning heating, ventilation, fire sprinklers, or air-conditioning systems.

(C) Electrical power failure.

(D) Major sewer line stoppage.

(E) Major pest or vermin infestation.

(F) Broken windows or exterior doors or gates that will not lock and that pose a security risk.

(G) Abatement of hazardous materials previously undiscovered that pose an immediate threat to pupil or staff.

(H) Structural damage creating a hazardous or uninhabitable condition.

(2) For purposes of this section, ''emergency facilities needs'' does not include any cosmetic or nonessential repairs.

(d) For the purpose of this section, structures or components shall only be replaced if it is more cost-effective than repair.

17592.73. (a) The State Allocation Board shall do all of the following:

(1) Adopt regulations and review and amend its regulations, as necessary, pursuant to 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 the administration of this article, including those necessary to specify the qualifications of the personnel performing the needs assessment and a method to ensure their independence. The initial regulations adopted pursuant to this article shall be adopted as emergency regulations, and the circumstances related to the initial adoption are hereby deemed to constitute an emergency for this purpose. The initial regulations adopted pursuant to this article shall be adopted by January 31, 2005.

(2) Establish and publish any procedures and policies in connection with the administration of this article as it deems necessary.

(3) Apportion funds to eligible school districts under this article.

(4) Provide technical assistance to school districts to implement this article.

(5) Submit an interim status report to the Legislature and the Governor by June 30, 2005, by compiling the reports submitted pursuant to paragraph (6) of subdivision (d) of Section 17592.70.

(6) By June 30, 2008, report to the Legislature and the Governor on expenditures pursuant to Section 17592.72 and projections of future expenditures pursuant to Section 17592.72.

SEC. 2. Section 41207.5 is added to the Education Code, to read:

41207.5. There is hereby established in the General Fund the Proposition 98 Reversion Account. The Legislature shall, from time to time, transfer into the Proposition 98 Reversion Account moneys previously appropriated in satisfaction of the requirements of Section 8 of Article XVI of the California Constitution that have not been disbursed or otherwise encumbered for the purposes for which they were appropriated. Moneys that are appropriated in satisfaction of the minimum funding obligation under Section 8 of Article XVI of the California Constitution that would otherwise revert to the unexpended balance of the General Fund shall instead be deposited in the Proposition 98 Reversion Account.

SEC. 3. The sum of two hundred fifty thousand dollars ($250,000) is hereby appropriated from the General Fund to the State Allocation Board for the administration of Article 1.5 (commencing with Section 17592.70) of Chapter 5 of Part 10.5 of the Education Code for the 2004–05 fiscal year.

SEC. 4. (a) The sum of thirty million dollars ($30,000,000) is hereby appropriated from the General Fund according to the following schedule:

(1) The sum of twenty-five million dollars ($25,000,000) to the State Department of Education for transfer to the State Allocation Board for

grants to school districts pursuant to Section 17592.70 of the Education Code.

(2) The sum of five million dollars ($5,000,000) for transfer to the School Facilities Emergency Repair Account for grants to school districts pursuant to Section 17592.72 of the Education Code.

(3) The Controller shall transfer any amount certified by the Office of Public School Construction to be needed to fully fund the grants provided pursuant to Section 17592.70 of the Education Code from the appropriation in paragraph (2) to the appropriation in paragraph (1). The Controller shall transfer any amount certified by the Office of Public School Construction to be unneeded to fully fund the grants provided pursuant to Section 17592.70 of the Education Code from the appropriation in paragraph (1) to the appropriation in paragraph (2). The Controller shall not make the transfer provided in paragraph (2) until receiving a certification from the Office of Public School Construction pursuant to this paragraph.

(b) For the purpose of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by subdivision (a) shall be deemed to be ''General Fund revenues appropriated for school districts,'' as defined in subdivision (c) of Section 41202 of the Education Code, for the 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. 5. It is the intent of the Legislature in enacting this act to implement the settlement agreement in the case of Williams v. State of California (Super. Ct., San Francisco, No. CGC-00-312236) and that local educational agencies, county offices of education, and state agencies with responsibility for implementing this act begin implementation as soon as practicable and with due diligence. Local educational agencies and county offices of education should use their best judgment as to the interpretation of provisions, recognizing that further implementation direction from the state in the form of statutes, regulations, and technical guidance may be provided in the future and may supersede local interpretations. The state recognizes that due to the date of enactment of this act and the time it will take to allocate the funding to local educational agencies and county offices of education, that full implementation of some of the provisions for school terms beginning in 2004–05 is impracticable.

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 improve the condition of school facilities and to ensure the safety of pupils at public schools and to implement the settlement agreement in the case of Williams v. State of California (Super. Ct., San Francisco, No. CGC-00-312236) as soon as possible, it is necessary for this act to take effect immediately.

CHAPTER 900

An act to amend Sections 1240, 14501, 17002, 17014, 17032.5, 17070.15, 17070.75, 17087, 17089, 33126, 33126.1, 41020, 52055.625, 52055.640, 60119, 60240, and 60252 of, to add Sections 35186, 41344.4, and 52055.662 to, and to repeal Section 62000.4 of, the Education Code, and to amend Section 36 of Chapter 216 of the Statutes of 2004, relating to education, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 2004.]

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

SECTION 1. Section 1240 of the Education Code is amended to read:

1240. The county superintendent of schools shall do all of the following:

(a) Superintend the schools of his or her county.

(b) Maintain responsibility for the fiscal oversight of each school district in his or her county pursuant to the authority granted by this code.

(c) (1) Visit and examine each school in his or her county at reasonable intervals to observe its operation and to learn of its problems. He or she may annually present a report of the state of the schools in his or her county, and of his or her office, including, but not limited to, his or her observations while visiting the schools, to the board of education and the board of supervisors of his or her county.

(2) (A) To the extent that funds are appropriated for purposes of this paragraph, the county superintendent, or his or her designee, shall annually present a report to the governing board of each school district under his or her jurisdiction, the county board of education of his or her county, and the board of supervisors of his or her county describing the state of the schools in the county or of his or her office that are ranked in deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index, as defined in subdivision (b) of Section 17592.70, and shall

include, among other things, his or her observations while visiting the schools.

(B) The county superintendent of the Counties of Alpine, Amador, Del Norte, Mariposa, Plumas, Sierra, and the City and County of San Francisco shall contract with another county office of education or an independent auditor to conduct the required visits and make all reports required by this paragraph.

(C) The results of the visit shall be reported to the governing board of the school district on a quarterly basis at a regularly scheduled meeting held in accordance with public notification requirements.

(D) The visits made pursuant to this paragraph shall be conducted at least annually and shall meet the following criteria:

(i) Not disrupt the operation of the school.

(ii) Be performed by individuals who meet the requirements of Section 45125.1.

(iii) Consist of not less than 25 percent unannounced visits in each county. During unannounced visits in each county, the county superintendent shall not demand access to documents or specific school personnel. Unannounced visits shall only be used to observe the condition of school repair and maintenance and the sufficiency of instructional materials, as defined by Section 60119.

(E) The priority objective of the visits made pursuant to this paragraph shall be to determine the status of all of the following circumstances:

(i) Sufficient textbooks as defined in Section 60119 and as specified in subdivision (i).

(ii) The condition of a facility that poses an emergency or urgent threat to the health or safety of pupils or staff as defined in district policy, or as defined by paragraph (1) of subdivision (c) of Section 17592.72.

(iii) The accuracy of data reported on the school accountability report card with respect to the availability of sufficient textbooks and instructional materials as defined by Section 60119 and the safety, cleanliness, and adequacy of school facilities, including good repair as required by Sections 17014, 17032.5, 17070.75, and 17089.

(d) Distribute all laws, reports, circulars, instructions, and blanks that he or she may receive for the use of the school officers.

(e) Annually present a report to the governing board of the school district and the Superintendent of Public Instruction regarding the fiscal solvency of any school district with a disapproved budget, qualified interim certification, or a negative interim certification, or that is determined at any time to be in a position of fiscal uncertainty pursuant to Section 42127.6.

(f) Keep in his or her office the reports of the Superintendent of Public Instruction.

(g) Keep a record of his or her official acts, and of all the proceedings of the county board of education, including a record of the standing, in each study, of all applicants for certificates who have been examined, which shall be open to the inspection of any applicant or his or her authorized agent.

(h) Enforce the course of study.

(i) (1) Enforce the use of state textbooks and instructional materials and of high school textbooks and instructional materials regularly adopted by the proper authority.

(2) For purposes of this subdivision, sufficient textbooks or instructional materials has the same meaning as in subdivision (c) of Section 60119.

(3) If a school is ranked in any of deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index, as defined in subdivision (b) of Section 17592.70, and is not currently under review through a state or federal intervention program, the county superintendent shall specifically review that school at least annually as a priority school. A review conducted for purposes of this paragraph shall be conducted within the first four weeks of the school year. For the 2004–05 fiscal year only, the county superintendent shall make a diligent effort to conduct a visit to each school pursuant to this paragraph within 120 days of receipt of funds for this purpose.

(4) If the county superintendent determines that a school does not have sufficient textbooks or instructional materials in accordance with subparagraph (A) of paragraph (1) of subdivision (a) of Section 60119 and as defined by subdivision (c) of Section 60119, the county superintendent shall do all of the following:

(A) Prepare a report that specifically identifies and documents the areas or instances of noncompliance.

(B) Provide within five business days of the review, a copy of the report to the school district, as provided in subdivision (c), and forward the report to the Superintendent of Public Instruction.

(C) Provide the school district with the opportunity to remedy the deficiency. The county superintendent shall ensure remediation of the deficiency no later than the second month of the school term.

(D) If the deficiency is not remedied as required pursuant to subparagraph (C), the county superintendent shall request the department, with approval by the State Board of Education, to purchase the textbooks or instructional materials necessary to comply with the sufficiency requirement of this subdivision. If the state board approves a recommendation from the department to purchase textbooks or instructional materials for the school district, the board shall issue a public statement at a regularly scheduled meeting indicating that the district superintendent and the governing board of the school district

failed to provide pupils with sufficient textbooks or instructional materials as required by this subdivision. Before purchasing the textbooks or instructional materials, the department shall consult with the district to determine which textbooks or instructional materials to purchase. All purchases of textbooks or instructional materials shall comply with Chapter 3.25 (commencing with Section 60420) of Part 33. The amount of funds necessary to the purchase the textbooks and materials is a loan to the school district receiving the textbooks or instructional materials. Unless the school district repays the amount owed based upon an agreed-upon repayment schedule with the Superintendent of Public Instruction, the Superintendent of Public Instruction shall notify the Controller and the Controller shall deduct an amount equal to the total amount used to purchase the textbooks and materials, from the next principal apportionment of the district or from another apportionment of state funds.

(j) Preserve carefully all reports of school officers and teachers.

(k) Deliver to his or her successor, at the close of his or her official term, all records, books, documents, and papers belonging to the office, taking a receipt for them, which shall be filed with the department.

(*l*) (1) Submit two reports during the fiscal year to the county board of education in accordance with the following:

(A) The first report shall cover the financial and budgetary status of the county office of education for the period ending October 31. The second report shall cover the period ending January 31. Both reports shall be reviewed by the county board of education and approved by the county superintendent of schools no later than 45 days after the close of the period being reported.

(B) As part of each report, the county superintendent shall certify in writing whether or not the county office of education is able to meet its financial obligations for the remainder of the fiscal year and, based on current forecasts, for two subsequent fiscal years. The certifications shall be classified as positive, qualified, or negative, pursuant to standards prescribed by the Superintendent of Public Instruction, for the purposes of determining subsequent state agency actions pursuant to Section 1240.1. For purposes of this subdivision, a negative certification shall be assigned to any county office of education that, based upon current projections, will be unable to meet its financial obligations for the remainder of the fiscal year or for the subsequent fiscal year. A qualified certification shall be assigned to any county office of education that may not meet its financial obligations for the current fiscal year or two subsequent fiscal years. A positive certification shall be assigned to any county office of education that will meet its financial obligations for the current fiscal year and subsequent two fiscal years. In accordance with those standards, the Superintendent of Public Instruction may reclassify

any certification. If a county office of education receives a negative certification, the Superintendent of Public Instruction, or his or her designee, may exercise the authority set forth in subdivision (c) of Section 1630. Copies of each certification, and of the report containing that certification, shall be sent to the Superintendent of Public Instruction at the time the certification is submitted to the county board of education. Copies of each qualified or negative certification and the report containing that certification shall be sent to the Controller at the time the certification is submitted to the county board of education.

(2) All reports and certifications required under this subdivision shall be in a format or on forms prescribed by the Superintendent of Public Instruction, and shall be based on standards and criteria for fiscal stability adopted by the State Board of Education pursuant to Section 33127. The reports and supporting data shall be made available by the county superintendent of schools to any interested party upon request.

(3) This subdivision does not preclude the submission of additional budgetary or financial reports by the county superintendent to the county board of education or to the Superintendent of Public Instruction.

(4) The county superintendent of schools is not responsible for the fiscal oversight of the community colleges in the county, however, he or she may perform financial services on behalf of those community colleges.

(m) If requested, act as agent for the purchase of supplies for the city and high school districts of his or her county.

(n) For purposes of Section 44421.5, report to the Commission on Teacher Credentialing the identity of any certificated person who knowingly and willingly reports false fiscal expenditure data relative to the conduct of any educational program. This requirement applies only if, in the course of his or her normal duties, the county superintendent of schools discovers information that gives him or her reasonable cause to believe that false fiscal expenditure data relative to the conduct of any educational program has been reported.

SEC. 2. Section 14501 of the Education Code is amended to read:

14501. (a) As used in this chapter, ''financial and compliance audit'' shall be consistent with the definition provided in the ''Standards for Audits of Governmental Organizations, Programs, Activities, and Functions'' promulgated by the Comptroller General of the United States. Financial and compliance audits conducted under this chapter shall fulfill federal single audit requirements.

(b) As used in this chapter, ''compliance audit'' means an audit that ascertains and verifies whether or not funds provided through apportionment, contract, or grant, either federal or state, have been properly disbursed and expended as required by law or regulation or both and includes the verification of each of the following:

(1) The reporting requirements for the sufficiency of textbooks or instructional materials, or both, as defined in Section 60119.

(2) Teacher misassignments pursuant to Section 44258.9.

(3) The accuracy of information reported on the School Accountability Report Card required by Section 33126. The requirements set forth in paragraphs (1) and (2) and this paragraph shall be added to the audit guide requirements pursuant to subdivision (b) of Section 14502.1.

SEC. 3. Section 17002 of the Education Code is amended to read:

17002. The following terms wherever used or referred to in this chapter, shall have the following meanings, respectively, unless a different meaning appears from the context:

(a) ''Apportionment'' means a reservation of funds necessary to finance the cost of any project approved by the board for lease to an applicant school district.

(b) ''Board'' means the State Allocation Board.

(c) ''Cost of project'' includes, but is not limited to, the cost of all real estate property rights, and easements acquired, and the cost of developing the site and streets and utilities immediately adjacent thereto, the cost of construction, reconstruction, or modernization of buildings and the furnishing and equipping, including the purchase of educational technology hardware, of those buildings, the supporting wiring and cabling, and the technological modernization of existing buildings to support that hardware, the cost of plans, specifications, surveys, and estimates of costs, and other expenses that are necessary or incidental to the financing of the project. For purposes of this section, ''educational technology hardware'' includes, but is not limited to, computers, telephones, televisions, and video cassette recorders.

(d) (1) ''Good repair'' means the facility is maintained in a manner that assures that it is clean, safe, and functional as determined pursuant to an interim evaluation instrument developed by the Office of Public School Construction. The instrument shall not require capital enhancements beyond the standards to which the facility was designed and constructed.

(2) By January 25, 2005, the Office of Public School Construction shall develop the interim evaluation instrument based on existing prototypes and shall consult with county superintendents of schools and school districts during the development of the instrument. The Office of Public School Construction shall report and make recommendations to the Legislature and Governor not later than December 31, 2005, regarding options for state standards as an alternative to the interim evaluation instrument developed pursuant to paragraph (1). By September 1, 2006, the Legislature and Governor shall, by statute, determine the state standard that shall apply for subsequent fiscal years.

(e) ''Lease'' includes a lease with an option to purchase.

(f) ''Project'' means the facility being constructed or acquired by the state for rental to the applicant school district and may include the reconstruction or modernization of existing buildings, construction of new buildings, the grading and development of sites, acquisition of sites therefor and any easements or rights-of-way pertinent thereto or necessary for its full use including the development of streets and utilities.

(g) ''Property'' includes all property, real, personal or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of this chapter.

SEC. 4. Section 17014 of the Education Code is amended to read:

17014. (a) The board shall require the school district to make all necessary repairs, renewals, and replacements to ensure that a project is at all times kept in good repair, working order, and condition. All costs incurred for this purpose shall be borne by the school district.

(b) In order to ensure compliance with subdivision (a) and encourage applicants to maintain all buildings under their control, the board shall require the applicant to do all of the following prior to the approval of a project:

(1) Establish a restricted account within the general fund of the school district for the exclusive purpose of providing moneys for regular maintenance and routine repair of school buildings, according the highest priority to funding for the purpose set forth in subdivision (a).

(2) Agree to deposit into the account established pursuant to paragraph (1), in each fiscal year for the term of the lease agreements of all projects constructed under this chapter, a minimum amount equal to or greater than 2 percent of the general fund budget of the applicant district for that fiscal year. This paragraph is applicable only to the following districts:

(A) High school districts with average daily attendance greater than 300.

(B) Elementary school districts with average daily attendance greater than 900.

(C) Unified school districts with average daily attendance greater than 1,200.

(c) For each project funded after July 1, 1998, the board shall require the applicant school district governing board to certify, as part of the annual budget process of the school district and beginning in the fiscal year in which the project is funded by the state, that a plan has been prepared for completing major maintenance, repair, and replacement requirements for the project. For purposes of this subdivision, the term ''major maintenance, repair, and replacement'' means roofing, siding, painting, floor and window coverings, fixtures, cabinets, heating and

cooling systems, landscaping, fences, and other items designated by the governing board of the school district. The board shall require the school district's governing board to certify that the plan includes and is being implemented as follows:

(1) Identification of the major maintenance, repair, and replacement needs for the project.

(2) Specification of a schedule for completing the major maintenance, repair, and replacement needs.

(3) Specification of a current cost estimate for the scheduled major maintenance, repair, and replacement needs.

(4) Specification of the school district's schedule for funding a reserve to pay for the scheduled major maintenance, repair, and replacement needs.

(5) Review of the plan annually, as a part of the annual budget process of the school district, and update, as needed, the major maintenance, repair, and replacement needs, the estimates of expected costs, and any adjustments in funding the reserve.

(6) Availability for public inspection of the original plan, and all updated versions of the plan, at the office of the superintendent of the school district during the working hours of the school district.

(7) Provision in the annual budget of the school district of a provision that states the total funding available in reserve for scheduled major maintenance, repair and replacement needs as specified in the updated plan, and an explanation if this amount is less than that specified in the updated plan. The reserve shall be maintained in the restricted account established pursuant to subdivision (b).

(d) For purposes of this section, ''good repair'' has the same meaning as specified in subdivision (d) of Section 17002.

SEC. 5. Section 17032.5 of the Education Code is amended to read:

17032.5. (a) The board shall establish the annual rent and conditions to be met by the lessee of a portable classroom leased pursuant to Section 17717.2 and shall require lessees to undertake all necessary maintenance, repairs, renewals, and replacements to ensure that a project is at all times kept in good repair, working order, and condition. All costs incurred for this purpose shall be borne by the lessee.

(b) For purposes of this section, ''good repair'' has the same meaning as specified in subdivision (d) of Section 17002.

SEC. 6. Section 17070.15 of the Education Code is amended to read:

17070.15. The following terms, wherever used or referred to in this chapter, shall have the following meanings, respectively, unless a different meaning appears from the context:

(a) ''Apportionment'' means a reservation of funds for the purpose of eligible new construction, modernization, or hardship approved by the board for an applicant school district.

(b) ''Attendance area'' means the geographical area serving an existing high school and those junior high schools and elementary schools included therein.

(c) ''Board'' means the State Allocation Board as established by Section 15490 of the Government Code.

(d) ''Committee'' means the State School Building Finance Committee established pursuant to Section 15909.

(e) ''County fund'' means a county school facilities fund established pursuant to Section 17070.43.

(f) ''Department'' means the Department of General Services.

(g) ''Fund'' means the applicable 1998 State School Facilities Fund, the 2002 State School Facilities Fund, or the 2004 State School Facilities Fund, established pursuant to Section 17070.40.

(h) ''Good repair'' has the same meaning as specified in subdivision (d) of Section 17002.

(i) ''Modernization'' means any modification of a permanent structure that is at least 25 years old, or in the case of a portable classroom, that is at least 20 years old, that will enhance the ability of the structure to achieve educational purposes.

(j) ''Portable classroom'' means a classroom building of one or more stories that is designed and constructed to be relocatable and transportable over public streets, and with respect to a single story portable classroom, is designed and constructed for relocation without the separation of the roof or floor from the building and when measured at the most exterior walls, has a floor area not in excess of 2,000 square feet.

(k) ''Property'' includes all property, real, personal or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of this chapter.

(*l*) ''School building capacity'' means the capacity of a school building to house pupils.

(m) ''School district'' means a school district or a county office of education. For purposes of determining eligibility under this chapter, ''school district'' may also mean a high school attendance area.

SEC. 7. Section 17070.75 of the Education Code is amended to read:

17070.75. (a) The board shall require the school district to make all necessary repairs, renewals, and replacements to ensure that a project is at all times maintained in good repair, working order, and condition. All costs incurred for this purpose shall be borne by the school district.

(b) In order to ensure compliance with subdivision (a) and to encourage school districts to maintain all buildings under their control, the board shall require an applicant school district to do all of the following prior to the approval of a project:

(1) Establish a restricted account within the general fund of the school district for the exclusive purpose of providing moneys for ongoing and major maintenance of school buildings, according the highest priority to funding for the purposes set forth in subdivision (a).

(2) (A) Agree to deposit into the account established pursuant to paragraph (1), in each fiscal year for 20 years after receipt of funds under this chapter, a minimum amount equal to or greater than 3 percent of the total general fund expenditures of the applicant school district, including other financing uses, for that fiscal year. Annual deposits to the account established pursuant to paragraph (1) in excess of $2^1/_2$ percent of the school district general fund budget may count towards the amount of funds required to be contributed by a school district in order to receive apportionments from the State School Deferred Maintenance Fund pursuant to Section 17584 to the extent that those funds are used for purposes that qualify for funding under that section.

(B) Notwithstanding subparagraph (A), for the 2004–05 fiscal year only, an applicant school district shall deposit into the account established pursuant to paragraph (1), no less than 2 percent of the total general fund expenditures of the school district, including other financing uses, for the fiscal year. The annual deposit to the account in excess of $1^1/_2$ percent of the school district general fund budget for the 2004–05 fiscal year may count towards the amount that a school district is required to contribute in order to receive apportionments from the State School Deferred Maintenance Fund pursuant to Section 17584 to the extent that those funds are used for purposes that qualify for funding under that section.

(C) A school district contribution to the account may be provided in lieu of meeting the ongoing maintenance requirements pursuant to Section 17014 to the extent the funds are used for purposes established in that section. A school district that serves as the administrative unit for a special education local plan area may elect to exclude from its total general fund expenditures, for purposes of this paragraph, the distribution of revenues that are passed through to participating members of the special education local plan area.

(D) This paragraph applies only to the following school districts:

(i) High school districts with an average daily attendance greater than 300 pupils.

(ii) Elementary school districts with an average daily attendance greater than 900 pupils.

(iii) Unified school districts with an average daily attendance greater than 1,200 pupils.

(3) Certify that it has publicly approved an ongoing and major maintenance plan that outlines the use of the funds deposited, or to be deposited, pursuant to paragraph (2). The plan may provide that the school district need not expend all of its annual allocation for ongoing and major maintenance in the year in which it is deposited if the cost of major maintenance requires that the allocation be carried over into another fiscal year. However, any state funds carried over into a subsequent year may not be counted toward the annual minimum contribution by the school district. A plan developed in compliance with this section shall be deemed to meet the requirements of Section 17585.

(c) A school district to which paragraph (2) of subdivision (b) does not apply shall certify to the board that it can reasonably maintain its facilities with a lesser level of maintenance.

(d) For purposes of calculating a county office of education requirement pursuant to this section, the 3 percent maintenance requirement shall be based upon the county office of education general fund less any restricted accounts.

(e) As a condition of participation in the school facilities program or the receipt of funds pursuant to Section 17582, for a fiscal year after the 2004–05 fiscal year, a school district shall establish a facilities inspection system to ensure that each of its schools is maintained in good repair.

(f) For purposes of this section, ''good repair'' has the same meaning as specified in subdivision (d) of Section 17002.

SEC. 8. Section 17087 of the Education Code is amended to read:

17087. As used in this chapter:

(a) ''Board'' means the State Allocation Board.

(b) ''Good repair'' has the same meaning as specified in subdivision (d) of Section 17002.

(c) ''Lessee'' means a school district or county superintendent of schools to whom the board has leased a portable classroom pursuant to this chapter.

(d) ''State School Building Aid Fund'' means that fund established pursuant to Section 16096.

SEC. 9. Section 17089 of the Education Code is amended to read:

17089. (a) The board shall lease portable classrooms to qualifying school districts and county superintendents of schools for not less than one dollar ($1) per year, nor more than four thousand dollars ($4,000) per year, for each portable classroom. This amount shall be annually increased according to the adjustment for inflation set forth in the statewide cost index for classroom construction, as determined by the board at its January meeting.

(b) The board shall require each lessee to undertake all necessary maintenance, repairs, renewal, and replacement to ensure that a project is at all times kept in good repair, working order, and condition. All costs incurred for this purpose shall be borne by the lessee.

(c) For purposes of this section, ''good repair'' has the same meaning as specified in subdivision (d) of Section 17002.

SEC. 10. Section 33126 of the Education Code is amended to read:

33126. (a) The school accountability report card shall provide data by which a parent can make meaningful comparisons between public schools that will enable him or her to make informed decisions on which school to enroll his or her children.

(b) The school accountability report card shall include, but is not limited to, assessment of the following school conditions:

(1) (A) Pupil achievement by grade level, as measured by the standardized testing and reporting programs pursuant to Article 4 (commencing with Section 60640) of Chapter 5 of Part 33.

(B) Pupil achievement in and progress toward meeting reading, writing, arithmetic, and other academic goals, including results by grade level from the assessment tool used by the school district using percentiles when available for the most recent three-year period.

(C) After the state develops a statewide assessment system pursuant to Chapter 5 (commencing with Section 60600) and Chapter 6 (commencing with Section 60800) of Part 33, pupil achievement by grade level, as measured by the results of the statewide assessment.

(D) Secondary schools with high school seniors shall list both the average verbal and math Scholastic Assessment Test scores to the extent provided to the school and the percentage of seniors taking that exam for the most recent three-year period.

(2) Progress toward reducing dropout rates, including the one-year dropout rate listed in the California Basic Education Data System or any successor data system for the schoolsite over the most recent three-year period, and the graduation rate, as defined by the State Board of Education, over the most recent three-year period when available pursuant to Section 52052.

(3) Estimated expenditures per pupil and types of services funded.

(4) Progress toward reducing class sizes and teaching loads, including the distribution of class sizes at the schoolsite by grade level, the average class size, and, if applicable, the percentage of pupils in kindergarten and grades 1 to 3, inclusive, participating in the Class Size Reduction Program established pursuant to Chapter 6.10 (commencing with Section 52120) of Part 28, using California Basic Education Data System or any successor data system information for the most recent three-year period.

(5) The total number of the school's fully credentialed teachers, the number of teachers relying upon emergency credentials, the number of teachers working without credentials, any assignment of teachers outside their subject areas of competence, misassignments, including misassignments of teachers of English learners, and the number of vacant teacher positions for the most recent three-year period.

(A) For purposes of this paragraph, ''vacant teacher position'' means a position to which a single designated certificated employee has not been assigned at the beginning of the year for an entire year or, if the position is for a one-semester course, a position of which a single designated certificated employee has not been assigned at the beginning of a semester for an entire semester.

(B) For purposes of this paragraph, ''misassignment'' means the placement of a certificated employee in a teaching or services position for which the employee does not hold a legally recognized certificate or credential or the placement of a certificated employee in a teaching or services position that the employee is not otherwise authorized by statute to hold.

(6) (A) Quality and currency of textbooks and other instructional materials, including whether textbooks and other materials meet state standards and are adopted by the State Board of Education for kindergarten and grades 1 to 8, inclusive, and adopted by the governing boards of school districts for grades 9 to 12, inclusive, and the ratio of textbooks per pupil and the year the textbooks were adopted.

(B) The availability of sufficient textbooks and other instructional materials, as defined in Section 60119, for each pupil, including English learners, in each of the following areas:

(i) The core curriculum areas of reading/language arts, mathematics, science, and history/social science.

(ii) Foreign language and health.

(iii) Science laboratory equipment for grades 9 to 12, inclusive, as appropriate.

(7) The availability of qualified personnel to provide counseling and other pupil support services, including the ratio of academic counselors per pupil.

(8) Availability of qualified substitute teachers.

(9) Safety, cleanliness, and adequacy of school facilities, including any needed maintenance to ensure good repair as specified in Section 17014, Section 17032.5, subdivision (a) of Section 17070.75, and subdivision (b) of Section 17089.

(10) Adequacy of teacher evaluations and opportunities for professional improvement, including the annual number of schooldays dedicated to staff development for the most recent three-year period.

(11) Classroom discipline and climate for learning, including suspension and expulsion rates for the most recent three-year period.

(12) Teacher and staff training, and curriculum improvement programs.

(13) Quality of school instruction and leadership.

(14) The degree to which pupils are prepared to enter the workforce.

(15) The total number of instructional minutes offered in the school year, separately stated for each grade level, as compared to the total number of the instructional minutes per school year required by state law, separately stated for each grade level.

(16) The total number of minimum days, as specified in Sections 46112, 46113, 46117, and 46141, in the school year.

(17) The number of advanced placement courses offered, by subject.

(18) The Academic Performance Index, including the disaggregation of subgroups as set forth in Section 52052 and the decile rankings and a comparison of schools.

(19) Whether a school qualified for the Immediate Intervention Underperforming Schools Program pursuant to Section 52053 and whether the school applied for, and received a grant pursuant to, that program.

(20) Whether the school qualifies for the Governor's Performance Award Program.

(21) When available, the percentage of pupils, including the disaggregation of subgroups as set forth in Section 52052, completing grade 12 who successfully complete the high school exit examination, as set forth in Sections 60850 and 60851, as compared to the percentage of pupils in the district and statewide completing grade 12 who successfully complete the examination.

(22) Contact information pertaining to any organized opportunities for parental involvement.

(23) For secondary schools, the percentage of graduates who have passed course requirements for entrance to the University of California and the California State University pursuant to Section 51225.3 and the percentage of pupils enrolled in those courses, as reported by the California Basic Education Data System or any successor data system.

(24) Whether the school has a college admissions test preparation course program.

(25) When available from the department, the claiming rate of pupils who earned a Governor's Scholarship Award pursuant to subdivision (a) of Section 69997 for the most recent two-year period. This paragraph applies only to schools that enroll pupils in grade 9, 10 or 11.

(c) If the Commission on State Mandates finds a school district is eligible for a reimbursement of costs incurred complying with this section, the school district shall be reimbursed only if the information

provided in the school accountability report card is accurate, as determined by the annual audit performed pursuant to Section 41020. If the information is determined to be inaccurate, the school district is not ineligible for reimbursement if the information is corrected by May 15.

(d) It is the intent of the Legislature that schools make a concerted effort to notify parents of the purpose of the school accountability report cards, as described in this section, and ensure that all parents receive a copy of the report card; to ensure that the report cards are easy to read and understandable by parents; to ensure that local educational agencies with access to the Internet make available current copies of the report cards through the Internet; and to ensure that administrators and teachers are available to answer any questions regarding the report cards.

SEC. 11. Section 33126.1 of the Education Code is amended to read:

33126.1. (a) The department shall develop and recommend for adoption by the State Board of Education a standardized template intended to simplify the process for completing the school accountability report card and make the school accountability report card more meaningful to the public.

(b) The standardized template shall include fields for the insertion of data and information by the department and by local educational agencies, including a field to report the determination of the sufficiency of textbooks and instructional materials, as defined in Section 60119, and a summary statement of the condition of school facilities, as defined in Section 17014, Section 17032.5, subdivision (a) of Section 17070.75, and subdivision (b) of Section 17089. The department shall provide examples of summary statements of the condition of school facilities that are acceptable and those that are unacceptable. When the template for a school is completed, it should enable parents and guardians to compare the manner in which local schools compare to other schools within that district as well as other schools in the state.

(c) In conjunction with the development of the standardized template, the department shall furnish standard definitions for school conditions included in the school accountability report card. The standard definitions shall comply with the following:

(1) Definitions shall be consistent with the definitions already in place or under the development at the state level pursuant to existing law.

(2) Definitions shall enable schools to furnish contextual or comparative information to assist the public in understanding the information in relation to the performance of other schools.

(3) Definitions shall specify the data for which the department will be responsible for providing and the data and information for which the local educational agencies will be responsible.

(d) By December 1, 2000, the department shall report to the State Board of Education on the school conditions for which it already has standard definitions in place or under development. The report shall include a survey of the conditions for which the department has valid and reliable data at the state, district, or school level. The report shall provide a timetable for the inclusion of conditions for which standard definitions or valid and reliable data do not yet exist through the department.

(e) By December 1, 2000, the Superintendent of Public Instruction shall recommend and the State Board of Education shall appoint 13 members to serve on a broad-based advisory committee of local administrators, educators, parents, and other knowledgeable parties to develop definitions for the school conditions for which standard definitions do not yet exist. The State Board of Education may designate outside experts in performance measurements in support of activities of the advisory board.

(f) By January 1, 2001, the State Board of Education shall approve available definitions for inclusion in the template as well as a timetable for the further development of definitions and data collection procedures. By July 1, 2001, and each year thereafter, the State Board of Education shall adopt the template for the current year's school accountability report card. Definitions for all school conditions shall be included in the template by July 1, 2002.

(g) The department shall annually post the completed and viewable template on the Internet. The template shall be designed to allow schools or districts to download the template from the Internet. The template shall further be designed to allow local educational agencies, including individual schools, to enter data into the school accountability report card electronically, individualize the report card, and further describe the data elements. The department shall establish model guidelines and safeguards that may be used by school districts secured access only for those school officials authorized to make modifications.

(h) The department shall annually post, on the Internet, each eligible school's claiming rate of pupils who earned an award for either of the programs established by subdivision (a) of Section 69997. The Scholarshare Investment Board shall provide the claiming rates, for the most recent two-year period, for each eligible school to the department by June 30 of each year. Schools shall post their claiming rate, required in paragraph (25) of subdivision (b) of Section 33216, from the Internet site of the department.

(i) The department shall maintain current Internet links with the Web sites of local educational agencies to provide parents and the public with easy access to the school accountability report cards maintained on the Internet. In order to ensure the currency of these Internet links, local educational agencies that provide access to school accountability report

cards through the Internet shall furnish current Uniform Resource Locators for their Web sites to the department.

(j) A school or school district that chooses not to utilize the standardized template adopted pursuant to this section shall report the data for its school accountability report card in a manner that is consistent with the definitions adopted pursuant to subdivision (c).

(k) The department shall provide recommendations for changes to the California Basic Education Data System, or any successor data system, and other data collection mechanisms to ensure that the information will be preserved and available in the future.

(*l*) Local educational agencies shall make these school accountability report cards available through the Internet or through paper copies.

(m) The department shall monitor the compliance of local educational agencies with the requirements to prepare and to distribute school accountability report cards.

SEC. 12. Section 35186 is added to the Education Code, to read:

35186. (a) A school district shall use the uniform complaint process it has adopted as required by Chapter 5.1 (commencing with Section 4600) of Title 5 of the California Code of Regulations, with modifications, as necessary, to help identify and resolve any deficiencies related to instructional materials, the condition of a facility that is not maintained in a clean or safe manner or in good repair, and teacher vacancy or misassignment.

(1) A complaint may be filed anonymously. A complainant who identifies himself or herself is entitled to a response if he or she indicates that a response is requested. A complaint form shall include a space to mark to indicate whether a response is requested. All complaints and responses are public records.

(2) The complaint form shall specify the location for filing a complaint. A complainant may add as much text to explain the complaint as he or she wishes.

(3) A complaint shall be filed with the principal of the school or his or her designee. A complaint about problems beyond the authority of the school principal shall be forwarded in a timely manner but not to exceed 10 working days to the appropriate school district official for resolution.

(b) The principal or the designee of the district superintendent, as applicable, shall make all reasonable efforts to investigate any problem within his or her authority. The principal or designee of the district superintendent shall remedy a valid complaint within a reasonable time period but not to exceed 30 working days from the date the complaint was received. The principal or designee of the district superintendent shall report to the complainant the resolution of the complaint within 45 working days of the initial filing. If the principal makes this report, the

principal shall also report the same information in the same timeframe to the designee of the district superintendent.

(c) A complainant not satisfied with the resolution of the principal or the designee of the district superintendent has the right to describe the complaint to the governing board of the school district at a regularly scheduled hearing of the governing board. As to complaints involving a condition of a facility that poses an emergency or urgent threat, as defined in paragraph (1) of subdivision (c) of Section 17592.72, a complainant who is not satisfied with the resolution proffered by the principal or the designee of the district superintendent has the right to file an appeal to the Superintendent of Public Instruction, who shall provide a written report to the State Board of Education describing the basis for the complaint and, as appropriate, a proposed remedy for the issue described in the complaint.

(d) A school district shall report summarized data on the nature and resolution of all complaints on a quarterly basis to the county superintendent of schools and the governing board of the school district. The summaries shall be publicly reported on a quarterly basis at a regularly scheduled meeting of the governing board of the school district. The report shall include the number of complaints by general subject area with the number of resolved and unresolved complaints. The complaints and written responses shall be available as public records.

(e) The procedure required pursuant to this section is intended to address all of the following:

(1) A complaint related to instructional materials as follows:

(A) A pupil, including an English learner, does not have standards-aligned textbooks or instructional materials or state adopted or district adopted textbooks or other required instructional material to use in class.

(B) A pupil does not have access to instructional materials to use at home or after school in order to complete required homework assignments.

(C) Textbooks or instructional materials are in poor or unusable condition, have missing pages, or are unreadable due to damage.

(2) A complaint related to teacher vacancy or misassignment as follows:

(A) A semester begins and a certificated teacher is not assigned to teach the class.

(B) A teacher who lacks credentials or training to teach English learners is assigned to teach a class with more than 20 percent English learner pupils in the class. This subparagraph does not relieve a school district from complying with state or federal law regarding teachers of English learners.

(C) A teacher is assigned to teach a class for which the teacher lacks subject matter competency.

(3) A complaint related to the condition of facilities.

(f) In order to identify appropriate subjects of complaint, a notice shall be posted in each classroom in each school in the school district notifying parents and guardians of the following:

(1) There should be sufficient textbooks and instructional materials. For there to be sufficient textbooks and instructional materials each pupil, including English learners, must have a textbook or instructional materials, or both, to use in class and to take home to complete required homework assignments.

(2) School facilities must be clean, safe, and maintained in good repair.

(3) The location at which to obtain a form to file a complaint in case of a shortage. Posting a notice downloadable from the Web site of the department shall satisfy this requirement.

(g) A local educational agency shall establish local policies and procedures, post notices, and implement this section on or before January 1, 2005.

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

(1) ''Good repair'' has the same meaning as specified in subdivision (d) of Section 17002.

(2) ''Misassignment'' means the placement of a certificated employee in a teaching or services position for which the employee does not hold a legally recognized certificate or credential or the placement of a certificated employee in a teaching or services position that the employee is not otherwise authorized by statute to hold.

(3) ''Teacher vacancy'' means a vacant teacher position as defined in subparagraph (A) of paragraph (5) of subdivision (b) of Section 33126.

SEC. 13. Section 41020 of the Education Code is amended to read:

41020. (a) It is the intent of the Legislature to encourage sound fiscal management practices among school districts for the most efficient and effective use of public funds for the education of children in California by strengthening fiscal accountability at the district, county, and state levels.

(b) (1) Not later than the first day of May of each fiscal year, each county superintendent of schools shall provide for an audit of all funds under his or her jurisdiction and control and the governing board of each local educational agency shall either provide for an audit of the books and accounts of the local educational agency, including an audit of income and expenditures by source of funds, or make arrangements with the county superintendent of schools having jurisdiction over the local educational agency to provide for that auditing.

(2) A contract to perform the audit of a local educational agency that has a disapproved budget or has received a negative certification on any budget or interim financial report during the current fiscal year or either of the two preceding fiscal years, or for which the county superintendent of schools has otherwise determined that a lack of going concern exists, is not valid unless approved by the responsible county superintendent of schools and the governing board.

(3) If the governing board of a local educational agency has not provided for an audit of the books and accounts of the local educational agency by April 1, the county superintendent of schools having jurisdiction over the local educational agency shall provide for the audit of each local educational agency.

(4) An audit conducted pursuant to this section shall fully comply with the Government Auditing Standards issued by the Comptroller General of the United States.

(5) For purposes of this section, ''local educational agency'' does not include community colleges.

(c) Each audit conducted in accordance with this section shall include all funds of the local educational agency, including the student body and cafeteria funds and accounts and any other funds under the control or jurisdiction of the local educational agency. Each audit shall also include an audit of pupil attendance procedures.

(d) All audit reports for each fiscal year shall be developed and reported using a format established by the Controller after consultation with the Superintendent of Public Instruction and the Director of Finance.

(e) (1) The cost of the audits provided for by the county superintendent of schools shall be paid from the county school service fund and the county superintendent of schools shall transfer the pro rata share of the cost chargeable to each district from district funds.

(2) The cost of the audit provided for by a governing board shall be paid from local educational agency funds. The audit of the funds under the jurisdiction and control of the county superintendent of schools shall be paid from the county school service fund.

(f) (1) The audits shall be made by a certified public accountant or a public accountant, licensed by the California Board of Accountancy, and selected by the local educational agency, as applicable, from a directory of certified public accountants and public accountants deemed by the Controller as qualified to conduct audits of local educational agencies, which shall be published by the Controller not later than December 31 of each year.

(2) Commencing with the 2003–04 fiscal year and except as provided in subdivision (d) of Section 41320.1, it is unlawful for a public accounting firm to provide audit services to a local educational agency

if the lead audit partner, or coordinating audit partner, having primary responsibility for the audit, or the audit partner responsible for reviewing the audit, has performed audit services for that local educational agency in each of the six previous fiscal years. The Education Audits Appeal Panel may waive this requirement if the panel finds that no otherwise eligible auditor is available to perform the audit.

(3) It is the intent of the Legislature that, notwithstanding paragraph (2) of this subdivision, the rotation within public accounting firms conform to provisions of the federal Sarbanes-Oxley Act of 2002 (P.L. 107-204; 15 U.S.C. Sec. 7201 et seq.), and upon release of the report required by the act of the Comptroller General of the United States addressing the mandatory rotation of registered public accounting firms, the Legislature intends to reconsider the provisions of paragraph (2). In determining which certified public accountants and public accountants shall be included in the directory, the Controller shall use the following criteria:

(A) The certified public accountants or public accountants shall be in good standing as certified by the Board of Accountancy.

(B) The certified public accountants or public accountants, as a result of a quality control review conducted by the Controller pursuant to Section 14504.2, shall not have been found to have conducted an audit in a manner constituting noncompliance with subdivision (a) of Section 14503.

(g) (1) The auditor's report shall include each of the following:

(A) A statement that the audit was conducted pursuant to standards and procedures developed in accordance with Chapter 3 (commencing with Section 14500) of Part 9 of Division 1 of Title 1.

(B) A summary of audit exceptions and management improvement recommendations.

(C) Each local education agency's audit shall include an auditor's evaluation on whether there is substantial doubt about the local agency's ability to continue as a going concern for a reasonable period of time. This evaluation shall be based on the Statement of Auditing Standards (SAS) No. 59, as issued by the AICPA regarding disclosure requirements relating the entity's ability to continue as a going concern.

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

(h) Not later than December 15, a report of each local educational agency audit for the preceding fiscal year shall be filed with the county

superintendent of schools of the county in which the local educational agency is located, the State Department of Education, and the Controller. The Superintendent of Public Instruction shall make any adjustments necessary in future apportionments of all state funds, to correct any audit exceptions revealed by those audit reports.

(i) (1) Commencing with the 2002–03 audit of local educational agencies pursuant to this section, each county superintendent of schools shall be responsible for reviewing the audit exceptions contained in an audit of a local educational agency under his or her jurisdiction related to attendance, inventory of equipment, internal control, and any miscellaneous items, and determining whether the exceptions have been either corrected or an acceptable plan of correction has been developed.

(2) Commencing with the 2004–05 audit of local educational agencies pursuant to this section, each county superintendent of schools shall include in the review of audit exceptions performed pursuant to this subdivision those audit exceptions related to use of instructional materials program funds, teacher misassignments pursuant to Section 44258.9, information reported on the school accountability report card required pursuant to Section 33126 and shall determine whether the exceptions are either corrected or an acceptable plan of correction has been developed.

(j) Upon submission of the final audit report to the governing board of each local educational agency and subsequent receipt of the audit by the county superintendent of schools having jurisdiction over the local educational agency, the county office of education shall do all of the following:

(1) Review audit exceptions related to attendance, inventory of equipment, internal control, and other miscellaneous exceptions. Attendance exceptions or issues shall include, but not be limited to, those related to revenue limits, adult education, and independent study.

(2) If a description of the correction or plan of correction has not been provided as part of the audit required by this section, then the county superintendent of schools shall notify the local educational agency and request the governing board of the local educational agency to provide to the county superintendent of schools a description of the corrections or plan of correction by March 15.

(3) Review the description of correction or plan of correction and determine its adequacy. If the description of the correction or plan of correction is not adequate, the county superintendent of schools shall require the local educational agency to resubmit that portion of its response that is inadequate.

(k) Each county superintendent of schools shall certify to the Superintendent of Public Instruction and the Controller, not later than May 15, that his or her staff has reviewed all audits of local educational

agencies under his or her jurisdiction for the prior fiscal year, that all exceptions that the county superintendent was required to review were reviewed, and that all of those exceptions, except as otherwise noted in the certification, have been corrected by the local educational agency or that an acceptable plan of correction has been submitted to the county superintendent of schools. In addition, the county superintendent shall identify, by local educational agency, any attendance-related audit exception or exceptions involving state funds, and require the local educational agency to which the audit exceptions were directed to submit appropriate reporting forms for processing by the Superintendent of Public Instruction.

(*l*) In the audit of a local educational agency for a subsequent year, the auditor shall review the correction or plan or plans of correction submitted by the local educational agency to determine if the exceptions have been resolved. If not, the auditor shall immediately notify the appropriate county office of education and the State Department of Education and restate the exception in the audit report. After receiving that notification, the State Department of Education shall either consult with the local educational agency to resolve the exception or require the county superintendent of schools to follow up with the local educational agency.

(m) (1) The Superintendent of Public Instruction shall be responsible for ensuring that local educational agencies have either corrected or developed plans of correction for any one or more of the following:

(A) All federal and state compliance audit exceptions identified in the audit.

(B) Any exceptions that the county superintendent certifies as of May 15 have not been corrected.

(C) Any repeat audit exceptions that are not assigned to a county superintendent to correct.

(2) In addition, the Superintendent of Public Instruction shall be responsible for ensuring that county superintendents of schools and each county board of education that serves as the governing board of a local educational agency either correct all audit exceptions identified in the audits of county superintendents of schools and of the local educational agencies for which the county boards of education serve as the governing boards or develop acceptable plans of correction for those exceptions.

(3) The Superintendent of Public Instruction shall report annually to the Controller on his or her actions to ensure that school districts, county superintendents of schools, and each county board of education that serves as the governing board of a school district have either corrected or developed plans of correction for any of the exceptions noted pursuant to paragraph (1).

(n) To facilitate correction of the exceptions identified by the audits issued pursuant to this section, commencing with 2002–03 audits pursuant to this section, the Controller shall require auditors to categorize audit exceptions in each audit report in a manner that will make it clear to both the county superintendent of schools and the Superintendent of Public Instruction which exceptions they are responsible for ensuring the correction of by a local educational agency. In addition, the Controller annually shall select a sampling of county superintendents of schools and perform a followup of the audit resolution process of those county superintendents of schools and report the results of that followup to the Superintendent of Public Instruction and the county superintendents of schools that were reviewed.

(o) County superintendents of schools shall adjust subsequent local property tax requirements to correct audit exceptions relating to local educational agency tax rates and tax revenues.

(p) If a governing board or county superintendent of schools fails or is unable to make satisfactory arrangements for the audit pursuant to this section, the Controller shall make arrangements for the audit and the cost of the audit shall be paid from local educational agency funds or the county school service fund, as the case may be.

(q) Audits of regional occupational centers and programs are subject to the provisions of this section.

(r) This section does not authorize examination of, or reports on, the curriculum used or provided for in any local educational agency.

(s) Notwithstanding any other provision of law, a nonauditing, management, or other consulting service to be provided to a local educational agency by a certified public accounting firm while the certified public accounting firm is performing an audit of the agency pursuant to this section must be in accord with Government Accounting Standards, Amendment No. 3, as published by the United States General Accounting Office.

SEC. 14. Section 41344.4 is added to the Education Code, to read:

41344.4. Notwithstanding any other provision of law, a local educational agency is not required to repay an apportionment based on a significant audit exception related to the requirements specified in paragraphs (1), (2), and (3) of subdivision (b) of Section 14501 if the county superintendent of schools certifies to the Superintendent of Public Instruction and the Controller that the audit exception was corrected by the local educational agency or that an acceptable plan of correction was submitted to the county superintendent of schools pursuant to subdivision (k) of Section 41020. With respect to textbooks and instructional materials, the plan shall be consistent with the requirements of subparagraph (A) of paragraph (2) of subdivision (a) of Section 60119.

SEC. 15. Section 52055.625 of the Education Code is amended to read:

52055.625. (a) It is the intent of the Legislature that the lists contained in paragraph (2) of subdivisions (c), (d), (e), and (f) be considered options that may be considered by a school in the development of its school action plan and that a school not be required to adopt all of the listed options as a condition of funding under the terms of this section. Instead, this listing of options is intended to provide the opportunity for focus and strategic planning as schools plan to address the needs of high-priority pupils.

(b) (1) As a condition of the receipt of funds, a school action plan shall include each of the following essential components:

(A) Pupil literacy and achievement.

(B) Quality of staff.

(C) Parental involvement.

(D) Facilities, curriculum, instructional materials, and support services.

(2) As a condition of the receipt of funds, a school action plan for a school initially applying to participate in the program on or after the 2004–05 fiscal year, shall include each of the following essential components:

(A) Pupil literacy and achievement.

(B) Quality of staff, including highly qualified teachers, as required by the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.), and appropriately credentialed teachers for English learners.

(C) Parental involvement.

(D) Facilities maintained in good repair as specified in Sections 17014, 17032.5, 17070.75, and 17089, curriculum, instructional materials that are, at a minimum, consistent with the requirements of Section 60119, and support services.

(c) (1) The pupil literacy and achievement component shall contain a strategy to focus on increasing pupil literacy and achievement, with necessary attention to the needs of English language learners. At a minimum, this strategy shall include a plan to achieve the following goals:

(A) Each pupil at the school will be provided appropriate instructional materials aligned with the academic content and performance standards adopted by the State Board of Education as required by law.

(B) Each significant subgroup at the school will demonstrate increased achievement based on API results by the end of the implementation period.

(C) English language learners at the school will demonstrate increased performance based on the English language development test

required by Section 60810 and the achievement tests required pursuant to Section 60640.

(2) To achieve the goals in paragraph (1), a school in its action plan may include, among other things, any of the following options:

(A) Selective class size reduction in key curricular areas provided this does not result in a decrease in the proportion of experienced credentialed teachers at the schoolsite.

(B) Increased learning time in key curricular areas identified as needing attention, including mathematics.

(C) Targeted intensive reading instruction utilizing reading capacity-level materials that may include, but are not limited to, the following strategies:

(i) The development of a reading competency program for pupils in grades 5 to 8, inclusive, whose reading scores are at or below the 40th percentile or in the two lowest performance levels, as adopted by the State Board of Education, on the reading portion of the achievement test, authorized by Section 60640. This program may include direct instruction in reading at grade level utilizing the English language arts content standards adopted pursuant to Section 60605. Additionally, this program may offer specialized intervention that utilizes state approved instructional materials adopted pursuant to Section 60200. It is the intent of the Legislature, as a recommendation, that this curriculum consist of at least one class period during the regular schoolday taught by a teacher trained in the English language arts standards pursuant to Section 60605. It is also the intent of the Legislature, as a recommendation, that periodic assessments throughout the year be conducted to monitor the progress of the pupils involved.

(ii) The use of a library media teacher to work cooperatively with every teacher and principal at the schoolsite to develop and implement an independent and free reading program, help teachers determine a pupil's reading level, order books that have been determined to meet the needs of pupils, help choose books at pupils' independent reading levels, and assure that pupils read a variety of genres across all academic content areas. For purposes of this article, ''library media teacher'' means a classroom teacher who possesses or is in the process of obtaining a library media teacher services credential consistent with Section 44868.

(D) Mentoring programs for pupils.

(E) Community, business, or university partnerships with the school.

(d) (1) The quality of staff component shall contain a strategy to attract, retain, and fairly distribute the highest quality staff at the school, including teachers, administrators, and support staff. At a minimum, this strategy shall include a plan to achieve the following goals:

(A) An increase in the number of credentialed teachers working at that schoolsite.

(B) An increase in or targeting of professional development opportunities for teachers related to the goals of the action plan and English language development standards adopted by the State Board of Education aligned with the academic content and performance standards, including, but not limited to, participation in professional development institutes established pursuant to Article 2 (commencing with Section 92220) of Chapter 5 of Part 65.

(C) By the end of the implementation period, successful completion by the schoolsite administrators of a program designed to maximize leadership skills.

(2) To achieve the goals in paragraph (1) a school may include in its action plan, among others, any of the following options:

(A) Incentives to attract credentialed teachers and quality administrators to the schoolsite, including, but not limited to, additional compensation strategies similar to those authorized pursuant to Section 44735.

(B) A school district preintern or intern program within which eligible emergency permit teachers located at the schoolsite would be required to participate, unless those individuals are already participating in another teacher preparation program that leads to the attainment of a valid California teaching credential.

(C) Common planning time for teachers, administrators, and support staff focused on improving pupil achievement.

(D) Mentoring for site administrators, peer assistance for credentialed teachers, and support services for new teachers, including, but not limited to, the Beginning Teacher Support and Assessment System.

(E) Providing assistance and incentives to teachers for completion of professional certification programs and toward attaining BCLAD or CLAD certification.

(F) Increasing professional development in state academic content and performance standards, including English language development standards.

(e) (1) The parental involvement component shall contain a strategy to change the culture of the school community to recognize parents and guardians as partners in the education of their children and to prepare and educate parents and guardians in the learning and academic progress of their children. At a minimum, this strategy shall include a commitment to develop a school-parent compact as required by Section 51101 and a plan to achieve the goal of maintaining or increasing the number and frequency of personal parent and guardian contacts each year at the schoolsite and school-home communications designed to promote parent and guardian support for meeting state standards and core curriculum requirements.

(2) To achieve the goals in subdivision (a), a school may in its action plan include, among others, any of the following options:

(A) Parent and guardian homework support classes.

(B) A program of regular home visits.

(C) After school and evening opportunities for parents, guardians, and pupils to learn together.

(D) Training programs to educate parents and guardians about state standards and testing requirements, including the high school exit examination.

(E) Creation, maintenance, and support of parent centers located on schoolsites to educate parents and guardians regarding pupil expectations and provide support to parents and guardians in their efforts to help their children learn.

(F) Programs targeted at parents and guardians of special education pupils.

(G) Efforts to develop a culture at the schoolsite focused on college attendance, including programs to educate parents and guardians regarding college entrance requirements and options.

(H) Providing more bilingual personnel at the schoolsite and at school related functions to communicate more effectively with parents and guardians who speak a language other than English.

(I) Providing an opportunity for parents to monitor online, if the technology is available, and in compliance with applicable state and federal privacy laws, the academic progress and attendance of their children.

(f) (1) The facilities, curriculum, instructional materials, and support services component shall contain a strategy to provide an environment that is conducive to teaching and learning and that includes the development of a high-quality curriculum and instruction aligned with the academic content and performance standards adopted pursuant to Section 60605 and the standards for English language development adopted pursuant to Section 60811 to measure progress made towards achieving English language proficiency. At a minimum, this strategy shall include the goal of providing adequate logistical support including, but not limited to, curriculum, quality instruction, instructional materials, support services, and supplies for every pupil.

(2) To achieve the goal specified in paragraph (1), a school in its action plan may include, among others, any of the following options:

(A) State and locally developed valid and reliable assessments based on state academic content standards.

(B) Increased learning time in key curricular areas identified as needing attention, including mathematics.

(C) The addition of more pupil support services staff, including, but not limited to, paraprofessionals, counselors, library media teachers,

nurses, psychologists, social workers, speech therapists, audiologists, and speech pathologists.

(D) Pupil support centers for additional tutoring or homework assistance.

(E) Use of most current standards-aligned textbooks adopted by the State Board of Education, including materials for English language learners.

(F) For secondary schools, offering advanced placement courses and courses that meet the requirements for admission to the University of California or the California State University.

(g) A school action plan to improve pupil performance that is developed for participation in the program established pursuant to this article shall meet the requirements of subdivisions (d) and (e) of Section 52054 and this article.

SEC. 16. Section 52055.640 of the Education Code is amended to read:

52055.640. (a) As a condition of the receipt of funds for the initial and each subsequent year of funding pursuant to this article and to ensure that the school is progressing towards meeting the goals of each of the essential components of its school action plan, each year the school district shall submit a report to the Superintendent of Public Instruction that includes the following:

(1) The academic improvement of pupils within the participating school as measured by the tests under Section 60640 and the progress made towards achieving English language proficiency as measured by the English language development test administered pursuant to Section 60810.

(2) The improvement of distribution of experienced teachers holding a valid California teaching credential across the district.

(3) The availability of instructional materials in core content areas that are aligned with the academic content and performance standards, including textbooks, for each pupil, including English language learners. Schools initially applying to participate in the program on or after the 2004–05 fiscal year shall measure the availability of instructional materials against the definition of ''sufficient instructional materials'' set forth in subdivision (c) of Section 60119.

(4) The number of parents and guardians presently involved at each participating schoolsite as compared to the number participating at the beginning of the program.

(5) The number of pupils attending afterschool, tutoring, or homework assistance programs.

(6) For participating secondary schools, the number of pupils who are enrolled in and successfully completing advanced placement courses, by type, and requirements for admission to the University of California or

the California State University, including courses in algebra, biology, and United States or world history.

(b) The report on the pupil literacy and achievement component shall be disaggregated by numerically significant subgroups, as defined in Section 52052, and English language learners and have a focus on improved scores in reading and mathematics as measured by the following:

(1) The Academic Performance Index, including the data collected pursuant to tests that are part of the Standardized Testing and Reporting Program and the writing sample that is part of that program.

(2) The results of the primary language test pursuant to Section 60640.

(3) Graduation rates, when the methodology for collecting this data has been confirmed to be valid and reliable.

(4) In addition, a school may use locally developed assessments to assist it in determining the pupil progress in academic literacy and achievement.

(c) The report on the quality of staff component shall include, but not be limited to, the following information:

(1) The number of teachers at the schoolsite holding a valid California teaching credential or district or university intern certificate or credential compared to those teachers at the same schoolsite holding a preintern certificate, emergency permit, or waiver.

(2) The number and ratio of teachers across the district holding a valid California teaching credential or district or university intern certificate or credential compared to those holding a preintern certificate, emergency permit, or waiver.

(3) The number of principals having completed training pursuant to Article 4.6 (commencing with Section 44510) of Chapter 3 of Part 25.

(4) The number of principals by credential type or years of experience and length of time at the schoolsite by years.

(d) The report on the parental involvement component shall include explicit involvement strategies being implemented at the schoolsite that are directly linked to activities supporting pupil academic achievement and verification that the schoolsite has developed a school-parent compact as required by Section 51101.

(e) All comparisons made in the reports required pursuant to this section shall be based on baseline data provided by the district and schoolsite in the action plan that is certified and submitted with the initial application.

(f) To the extent that data is already reported to the Superintendent of Public Instruction, a school district need not include the data in the reports submitted pursuant to this section.

(g) Before submitting the reports required pursuant to this section, the school district shall, at a regularly scheduled public meeting of the governing board, review a participating school's progress towards achieving those goals.

SEC. 17. Section 52055.662 is added to the Education Code, to read:

52055.662. It is the intent of the Legislature to appropriate any savings achieved as a result of schools being phased out of the Immediate Intervention Underperforming School Program and the High Priority Schools Grant Program to provide High Priority Schools Grant awards to eligible schools, pursuant to Section 52055.605, that have not previously received a grant under this program.

SEC. 18. Section 60119 of the Education Code is amended to read:

60119. (a) In order to be eligible to receive funds available for the purposes of this article, the governing board of a school district shall take the following actions:

(1) (A) The governing board shall hold a public hearing or hearings at which the governing board shall encourage participation by parents, teachers, members of the community interested in the affairs of the school district, and bargaining unit leaders, and shall make a determination, through a resolution, as to whether each pupil in each school in the district has sufficient textbooks or instructional materials, or both, in each of the following subjects, as appropriate, that are consistent with the content and cycles of the curriculum framework adopted by the state board:

(i) Mathematics.

(ii) Science.

(iii) History-social science.

(iv) English/language arts, including the English language development component of an adopted program.

(B) The public hearing shall take place on or before the end of the eighth week from the first day pupils attend school for that year. A school district that operates schools on a multitrack, year-round calendar shall hold the hearing on or before the end of the eighth week from the first day pupils attend school for that year on any tracks that begin a school year in August or September. For purposes of the 2004–05 fiscal year only, the governing board of a school district shall make a diligent effort to hold a public hearing pursuant to this section on or before December 1, 2004.

(C) As part of the hearing required pursuant to this section, the governing board shall also make a written determination as to whether each pupil enrolled in a foreign language or health course has sufficient textbooks or instructional materials that are consistent with the content and cycles of the curriculum frameworks adopted by the state board for

those subjects. The governing board shall also determine the availability of laboratory science equipment as applicable to science laboratory courses offered in grades 9 to 12, inclusive. The provision of the textbooks, instructional materials or science equipment specified in this subparagraph is not a condition of receipt of funds provided by this subdivision.

(2) (A) If the governing board determines that there are insufficient textbooks or instructional materials, or both, the governing board shall provide information to classroom teachers and to the public setting forth, for each school in which an insufficiency exists, the reasons that each pupil does not have sufficient textbooks or instructional materials, or both, and take any action, except an action that would require reimbursement by the Commission on State Mandates, to ensure that each pupil has sufficient textbooks or instructional materials, or both, within two months of the beginning of the school year in which the determination is made.

(B) In carrying out subparagraph (A), the governing board may use money in any of the following funds:

(i) Any funds available for textbooks or instructional materials, or both, from categorical programs, including any funds allocated to school districts that have been appropriated in the annual Budget Act.

(ii) Any funds of the school district that are in excess of the amount available for each pupil during the prior fiscal year to purchase textbooks or instructional materials, or both.

(iii) Any other funds available to the school district for textbooks or instructional materials, or both.

(b) The governing board shall provide 10 days' notice of the public hearing or hearings set forth in subdivision (a). The notice shall contain the time, place, and purpose of the hearing and shall be posted in three public places in the school district. The hearing shall be held at a time that will encourage the attendance of teachers and parents and guardians of pupils who attend the schools in the district and shall not take place during or immediately following school hours.

(c) (1) For purposes of this section, ''sufficient textbooks or instructional materials'' means that each pupil, including English learners, has a textbook or instructional materials, or both, to use in class and to take home to complete required homework assignments. This paragraph does not require two sets of textbooks or instructional materials for each pupil.

(2) Sufficient textbooks or instructional materials as defined in paragraph (1), does not include photocopied sheets from only a portion of a textbook or instructional materials copied to address a shortage.

(d) Except for purposes of Section 60252, governing boards of school districts that receive funds for instructional materials from any state

source, are subject to the requirements of this section only in a fiscal year in which the Superintendent of Public Instruction determines that the base revenue limit for each school district will increase by at least 1 percent per unit of average daily attendance from the prior fiscal year.

SEC. 19. Section 60240 of the Education Code is amended to read:

60240. (a) The State Instructional Materials Fund is hereby continued in existence in the State Treasury. The fund shall be a means of annually funding the acquisition of instructional materials as required by the Constitution of the State of California. Notwithstanding Section 13340 of the Government Code, all money in the fund is continuously appropriated to the State Department of Education without regard to fiscal years for carrying out the purposes of this part. It is the intent of the Legislature that the fund shall provide for flexibility of instructional materials, including classroom library materials.

(b) The State Department of Education shall administer the fund under policies established by the state board.

(c) (1) The state board shall encumber part of the fund to pay for accessible instructional materials pursuant to Sections 60312 and 60313 to accommodate pupils who are visually impaired or have other disabilities and are unable to access the general curriculum.

(2) The state board may encumber funds, in an amount not to exceed two hundred thousand dollars ($200,000), for replacement of instructional materials, obtained by a school district with its allowance that are lost or destroyed by reason of fire, theft, natural disaster, or vandalism.

(3) The state board may encumber funds for the costs of warehousing and transporting instructional materials it has acquired.

(d) The department may expend up to five million dollars ($5,000,000) from the fund to acquire instructional materials for school districts pursuant to subdivision (i) of Section 1240. The fund shall be replenished by amounts repaid by school districts or deducted from apportionments to school districts by the Controller pursuant to subdivision (i) of Section 1240.

SEC. 20. Section 60252 of the Education Code is amended to read:

60252. (a) The Pupil Textbook and Instructional Materials Incentive Account is hereby created in the State Instructional Materials Fund, to be used for the Pupil Textbook and Instructional Materials Incentive Program set forth in Article 7 (commencing with Section 60117) of Chapter 1. All money in the account shall be allocated by the Superintendent of Public Instruction to school districts maintaining any kindergarten or any of grades 1 to 12, inclusive, that satisfy each of the following criteria:

(1) A school district shall provide assurance to the Superintendent of Public Instruction that the district has complied with Section 60119.

(2) A school district shall ensure that the money will be used to carry out its compliance with Section 60119 and shall supplement any state and local money that is expended on textbooks or instructional materials, or both.

(3) A school district shall ensure that textbooks and instructional materials are ordered, to the extent practicable, before the school year begins.

(b) The superintendent shall ensure that each school district has an opportunity for funding per pupil based upon the district's prior year base revenue limit in relation to the prior year statewide average base revenue limit for similar types and sizes of districts. Districts below the statewide average shall receive a greater percentage of state funds, and districts above the statewide average shall receive a smaller percentage of state funds, in an amount equal to the percentage that the district's base revenue limit varies from the statewide average. Any district with a base revenue limit that equals or exceeds 200 percent of the statewide average shall not be eligible for state funding under this section.

SEC. 21. Section 62000.4 of the Education Code is repealed.

SEC. 22. Section 36 of Chapter 216 of the Statutes of 2004 is amended to read:

Sec. 36. (a) The sum of nine hundred fifteen million four hundred forty-one thousand dollars ($915,441,000) 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 2004.

(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 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.

(B) 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. The funds appropriated pursuant to this subparagraph 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 based on the 2003 base API score pursuant to Section 52056 of the Education Code. The funds apportioned pursuant to this subparagraph shall be used to purchase standards-aligned instructional materials pursuant to Section 60605 of the Education Code.

(C) 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.

(D) 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 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. 23. (a) The sum of twenty million two hundred thousand dollars ($20,200,000) is hereby appropriated from the General Fund in accordance with the following schedule:

(1) The sum of five million dollars ($5,000,000) to the State Department of Education for transfer to the State Instructional Materials Fund for purposes of acquiring instructional materials for school districts pursuant to subdivision (i) of Section 1240 of the Education Code.

(2) The sum of fifteen million dollars ($15,000,000) to the State Department of Education for allocation to county offices of education to review, monitor, and report on teacher training, certification, misassignment, hiring and retention practices of school districts pursuant to subparagraph (G) of paragraph (1) of subdivision (a) of Section 42127.6 of the Education Code, subparagraphs (A) and (B) of paragraph (1) of subdivision (b) of Section 44258.9 of the Education Code, and paragraph (4) of subdivision (e) of Section 44258.9 of the Education Code, and to conduct and report on site visits pursuant to paragraph (2) of subdivision (c) of Section 1240 of the Education Code, and oversee schools' compliance with instructional materials sufficiency requirements as provided in paragraphs (2) to (4), inclusive, of subdivision (i) of Section 1240 of the Education Code. Funds appropriated in this paragraph shall be allocated annually to county offices of education at the rate of three thousand dollars ($3,000) for each school in the county ranked in deciles 1 to 3, inclusive, of the Academic Performance Index, pursuant to Section 52056 of the Education Code, based on the 2003 base Academic Performance Index score for each school, provided that the annual allocation for each county shall be a minimum of twenty thousand dollars ($20,000). If there are insufficient funds in any year to make the allocations required by this paragraph, the department shall allocate funding in proportion to the number of sites in each county. County offices shall contract with another county office or independent auditor for any work funded by this paragraph that is associated with a school operated by that county office.

(3) The sum of two hundred thousand dollars ($200,000) to the State Department of Education to implement this act.

(b) For the purpose of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by paragraphs (1) and (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 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. Funds appropriated by this section shall be available for transfer or encumbrance for three fiscal years, beginning in 2004–05.

SEC. 24. The State Department of Education shall develop an instrument to assist county superintendents of schools evaluate the sufficiency of textbooks pursuant to Section 1240 of the Education Code. It is the intent of the Legislature that county superintendents conduct the evaluation during the same visit that they inspect sites pursuant to Section 1240 of the Education Code.

SEC. 25. (a) It is the intent of the Legislature to memorialize and to implement the State of California's settlement agreement in the case of Williams v. California (Super. Ct. San Francisco, No. CGC-00-312236) and that the provisions of law added or modified by this act be substantially preserved as a matter of state policy in settlement of this case. The state is not, however, precluded from taking additional measures in furtherance of the settlement agreement and to improve the quality of education for pupils, in ways consistent with the provisions of the settlement agreement.

(b) Further, it is the intent of the Governor and the Legislature in enacting this act to establish these minimum thresholds for teacher quality, instructional materials, and school facilities. The Legislature finds and the Governor agrees that these minimum thresholds are essential in order to ensure that all of California's public school pupils have access to the basic elements of a quality public education. However, these minimum thresholds in no way reflect the full extent of the Legislature's and the Governor's expectations of what California's public schools are capable of achieving. Instead, these thresholds for teacher quality, instructional materials, and school facilities are intended by the Legislature and by the Governor to be a floor, rather than a ceiling, and a beginning, not an end, to the State of California's commitment and effort to ensure that all California school pupils have access to the basic elements of a quality public education.

(c) It is the intent of the Legislature and of the Governor that teachers, school administrators, trustees and staff, parents, and pupils all recommit themselves to the pursuit of academic excellence in California public schools.

(d) It is the intent of the Legislature that local educational agencies, county offices of education, and state agencies with responsibility for implementing this act begin implementation as soon as practicable and with due diligence. Local educational agencies and county offices of education should use their best judgment as to the interpretation of provisions, recognizing that further implementation direction from the state in the form of statutes, regulations, and technical guidance may be provided in the future and may supersede local interpretations. The state recognizes that due to the date of enactment of this act and the time it will

take to allocate the funding to local educational agencies and county offices of education, that full implementation of some of the provisions for school terms beginning in 2004–05 is impracticable.

SEC. 26. The Legislature finds and declares that Sections 10 and 11 of this act further the purposes of the Classroom Instructional Improvement and Accountability Act.

SEC. 27. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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:

In order to ensure that all pupils in the public schools are provided standards-aligned instructional materials and are housed in adequately maintained school facilities, to ensure that school accountability report cards include important information, and to implement the settlement agreement in the case of Williams v. State of California (Super. Ct., San Francisco, No. CGC-00-312236) as soon possible, it is necessary for this act to take effect immediately.

CHAPTER 901

An act to amend Section 37670 of, to add an article heading immediately preceding Section 37670 of, and to add Article 2 (commencing with Section 37680) to Chapter 5.5 of Part 22 of, the Education Code, relating to year-round schools, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 2004.]

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

SECTION 1. An article heading is added immediately preceding Section 37670 of the Education Code, to read:

Article 1. Multitrack Year-round Scheduling

SEC. 2. Section 37670 of the Education Code is amended to read:

37670. (a) Except as provided in Article 2 (commencing with Section 37680), a school district may operate a program of multitrack year-round scheduling at one or more schools within the district. A program of multitrack year-round scheduling may operate at a schoolsite for as few as 163 days in each fiscal year if the governing board of the school district adopts a resolution at a regularly scheduled board meeting certifying that both of the following criteria are met at the schoolsite:

(1) The number of annual instructional minutes is not less than that of schools of the same grade levels utilizing the traditional school calendar.

(2) It is not possible for the school to maintain a multitrack schedule containing the same number of instructional days as are provided in schools of the district utilizing the traditional school calendar given the facilities, program, class sizes, and projected number of pupils enrolled at the schoolsite.

(b) A certificated employee working under a program described in this section, except one serving under an administrative or supervisorial credential who is assigned full time to a school in a position requiring qualifications for certification, shall work the same number of days and shall increase the number of minutes worked daily on a uniform basis.

(c) A program conducted pursuant to this section is eligible for apportionment from the State School Fund.

SEC. 3. Article 2 (commencing with Section 37680) is added to Chapter 5.5 of Part 22 of the Education Code, to read:

Article 2. Concept 6 Class Scheduling

37680. For purposes of this article, the following terms have the following meanings:

(a) ''Capacity-related busing'' means transporting a pupil to a school other than the school of residence in order to reduce the number of pupils attending the school of residence.

(b) ''Circumstances beyond the control of the district'' means any of the following:

(1) An increase in pupil population beyond the demographic projections set forth in the district's comprehensive action plan, or an amendment thereto, if the increase was not reasonably foreseeable through the use of annual, informed reestimates of demographic projections.

(2) A cost escalation, shortage in construction material or capacity, delay in completion of an environmental review, or natural or

human-made disaster materially affecting the district's facilities program, if the circumstance was not reasonably foreseeable and the district exercised due diligence in planning for that circumstance.

(3) A lack of sufficient state or local funds to complete necessary school construction. ''Lack of sufficient state or local funds'' may not be substantiated if a district expends state or local funds designated for new construction for any purpose other than the construction of additional school facilities to reduce reliance on the Concept 6 program, except for funds for projects eligible to receive facility hardship funds pursuant to Article 8 (commencing with Section 17075.10) of Chapter 12.5 of Part 10.

(c) ''Comprehensive action plan'' means the plan developed pursuant to Section 37682.

(d) ''Concept 6'' means a program whereby a school operates on a three-track year-round calendar in which each track provides fewer than 180 days, but no fewer than 163 days, of instruction per school year.

(e) ''Specific school building plan'' means both of the following:

(1) The district has identified preferred sites and has approved projects, as required under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), needed to satisfy the pupil capacity projected in the district's comprehensive action plan.

(2) The district has identified and obtained the funding necessary to complete the particular projects identified. If state funding is part of the funding identified, a district is deemed to have obtained state funding if it has received either of the following:

(A) An apportionment from the state for the project.

(B) A preliminary apportionment for the project under the Critically Overcrowded School Facilities Program, as set forth in Article 11 (commencing with Section 17078.10) of Chapter 12.5 of Part 10.

(f) ''State board'' means the State Board of Education.

(g) ''Substantial progress'' means achieving a total enrollment on Concept 6 calendars of no more than 110 percent of the annual numerical goals set forth in the district's comprehensive action plan.

(h) ''Technical assistance'' includes, but is not limited to, assistance in identifying and acquiring a schoolsite, guidance in maximizing access to funding, and facilitating the process of obtaining state approval for new construction projects.

37681. (a) Commencing with the 2004–05 school year, a school district may not operate a Concept 6 program, unless the school district operated a Concept 6 program continuously since the 2003–04 school year.

(b) A school initially operating on or after July 1, 2004, may not operate a Concept 6 program if operation of the program would increase

the number of schools in the district operating a Concept 6 program above the number in operation in the district, on average, over the preceding two school years.

37682. (a) As a condition of operating a Concept 6 program at a school in the 2004–05 school year or thereafter, a district shall, by January 1, 2005, present to the department a comprehensive action plan detailing the strategy and steps to be taken annually to eliminate the use of the Concept 6 program as soon as practicable, and no later than July 1, 2012. Except as provided in subdivision (b), the action plan shall include all of the following:

(1) An analysis of the factors relating to the district's current and projected operation of the Concept 6 program including, but not limited to, demographic forecasts, space use and needs, class sizes, programmatic constraints, facility construction status, the amount of funding needed to create additional classroom space, and the proposed sources of that funding.

(2) A detailed description of the multiple phases of planning and construction, including site identification, site acquisition, construction commencement and completion date, and occupancy dates of projects designed to eliminate use of the Concept 6 program, including a reasonable projection of the number of additional pupil seats to be provided through each of the multiple phases of planning and construction.

(3) Reasonable, districtwide numerical goals against which annual progress toward eliminating the use of the Concept 6 program can be measured, including a projection of the number of pupils, if any, the district estimates will remain on a Concept 6 program on July 1 of each year through 2012.

(b) If a district projects that it will eliminate the Concept 6 program on or before July 1, 2008, the district shall not be required to include in its comprehensive action plan the information contained in paragraphs (2) and (3) of subdivision (a) but, instead, shall include a narrative explanation of the manner in which it will accomplish its goal to eliminate the Concept 6 program and shall project the date that each school in the district will eliminate the program.

(c) A district may not transport pupils to another school more than 40 minutes away from the school of residence, other than as required pursuant to a desegregation plan, as a means to eliminate the Concept 6 program.

37683. (a) The Superintendent of Public Instruction shall evaluate a comprehensive action plan submitted by a district and shall make recommendations to the state board for approval or disapproval of the plan. The evaluation shall be based on the reasonableness and practicability of the district in eliminating the Concept 6 program by the

earliest practicable date and no later than July 1, 2012. The evaluation shall include an analysis of whether adequate sources of funding have been identified for the projects necessary to eliminate the program. In considering whether a district has identified adequate sources of funding, the superintendent shall consult with the Office of Public School Construction.

(b) If the state board disapproves a comprehensive action plan, it shall specify the reasons for the disapproval and require the district to submit a revised plan, within a time specified by the state board, to address the state board's concerns.

37684. (a) A district operating a Concept 6 program shall report each January to the Superintendent of Public Instruction, who shall report to the state board, on progress made in reaching the annual numerical goals established in its comprehensive action plan. If a district fails to meet an annual numerical goal, the district shall identify the specific cause of the failure and amend its comprehensive action plan to indicate the specific steps that it will take to remedy that failure so that it will meet its deadline to eliminate the Concept 6 program as stated in its comprehensive action plan.

(b) If the district's progress toward meeting its numerical goals has or is projected to change materially, the district shall file a supplemental, mid-year report with the Superintendent of Public Instruction. The report shall describe the nature and cause of the material change and indicate the specific steps that the district will take, and the state technical assistance needed, if any, to address the change. The superintendent shall evaluate the supplemental, mid-year report and make recommendations to the state board for approval or disapproval. The evaluation shall be based on the reasonableness and practicability of the district to reach its annual goals and eliminate the Concept 6 program by the earliest practicable date, and no later than July 1, 2012. If the state board disapproves a report, it shall specify the reasons for disapproval and require the district to submit a revised report, within a timeframe specified by the state board, to address the concerns raised by the state board.

37685. (a) A district that plans to operate a Concept 6 program after June 30, 2006, shall, by July 1, 2006, and by July 1 of any succeeding year in which it plans to operate a Concept 6 program, as a condition of operating that program, submit evidence in writing to establish to the satisfaction of the Superintendent of Public Instruction that substantial progress has been made toward meeting its annual numerical goals as stated in its comprehensive action plan.

(b) The superintendent shall evaluate the written submission to determine whether the district has made substantial progress toward meeting its goals and shall submit a report to the state board.

37686. (a) If a district fails to meet its annual numerical goals for any two consecutive years between 2005 and 2012, the district shall be prohibited from all the following until the district achieves substantial progress toward meeting its annual numerical goals:

(1) Approving any new construction or new portable classroom other than a project directly designed to eliminate the use of the Concept 6 program or to reduce reliance on capacity-related busing that transports pupils more than 40 minutes to or from school.

(2) To the extent permitted by law, designating revenues from developer fees for any purpose not directly related to eliminating the Concept 6 program or reducing reliance on capacity-related busing.

(3) Approving the issuance of a Certificate of Participation for any school facilities-related purpose not directly related to the elimination of the Concept 6 program or reducing reliance on capacity-related busing.

(b) Subdivision (a) does not preclude a district from using funding from any source for a project that is eligible for hardship funding approved by the State Allocation Board pursuant to Article 8 (commencing with Section 17075.10) of Chapter 12.5 of Part 10.

37687. (a) A district that plans to operate a Concept 6 program after June 30, 2009, shall by July 1 of 2009, and by July 1 of any succeeding year in which it plans to operate a Concept 6 program, submit evidence in writing to establish to the satisfaction of the Superintendent of Public Instruction that it has developed a specific school building plan to provide adequate pupil capacity to eliminate the Concept 6 program by the earliest practicable date and no later than July 1, 2012.

(b) The superintendent shall evaluate the written submission to determine whether the district has developed a specific school building plan and shall submit a report to the state board.

37688. (a) If on or after July 31, 2008, and any succeeding year in which a district operates a Concept 6 program, the state board finds that a district has failed to make substantial progress in eliminating the Concept 6 program, or if on or after July 31, 2009, and any succeeding year in which a district operates a Concept 6 program, the state board finds that a district has failed to develop a specific school building plan, the state board shall hold a public hearing to determine the cause of the failure and the remedies to be undertaken by the state board to ensure elimination of the Concept 6 program by the earliest practicable date and no later than July 1, 2012.

(b) Prior to the public hearing, the Superintendent of Public Instruction and the State Allocation Board shall each provide a written analysis and opinion to the state board as to the cause of the failure and the remedies proposed to be undertaken. The State Allocation Board shall render its opinion based upon a written analysis prepared by the Office of Public School Construction. The district may submit its own

analysis as to the cause of the failure and remedies it proposes to be undertaken.

(c) After the public hearing, the state board shall adopt a remedial plan that the district shall follow to ensure elimination of the Concept 6 program by the earliest practicable date and no later than July 1, 2012.

(d) (1) If the state board determines that the failure of a district to achieve substantial progress or develop a specific school building plan is due to circumstances beyond the control of the district, the remedial plan adopted by the state board may provide for technical assistance to the district from the department, the Office of Public School Construction, or the Division of the State Architect. The remedial plan may also recommend action for state financial assistance necessary to enable the district to eliminate the Concept 6 program by the earliest date practicable and no later than July 1, 2012.

(2) If the state board determines that the failure of the district to achieve substantial progress or develop a specific school building plan is not due to circumstances beyond the control of the district, but due to its failure to act diligently to plan for the elimination of the Concept 6 program or to execute its comprehensive action plan, the remedial plan shall mandate at least quarterly review and oversight of the district by the department. The remedial plan may also include any of the measures described in paragraph (1) or other measures as the state board deems necessary to enable the district to eliminate the Concept 6 program by the earliest date practicable and no later than July 1, 2012.

37689. (a) In addition to Section 37688, on or after July 31, 2009, if the state board determines that the failure of a district to achieve substantial progress or develop a specific school building plan is not due to circumstances beyond the control of the district, but due to its failure to act diligently to plan for the elimination of the Concept 6 program or to execute its comprehensive action plan, the board shall hold a public hearing to determine whether the state board should implement direct oversight of the district's facilities construction program.

(b) If the state board determines that direct oversight is necessary, the state board shall implement the oversight within 90 days of that determination.

(1) Direct oversight by the state board shall consist of assigning a monitor to the district who shall report to the state board at each of its regularly scheduled meetings on progress made by the district in working toward the elimination of the Concept 6 program. The monitor shall have relevant experience in engineering, construction, or management of major public works projects and shall have the resources and authority to contract with appropriate professionals in the fields of program management, project management, and finance. In selecting a monitor, the state board shall receive nominees from, and consult with,

the superintendent of the district, the Office of Public School Construction, and the citizens' oversight committee of the district, established under Section 15278.

(2) The monitor shall make recommendations to the district with respect to the planning and implementation of its school construction program. The district shall follow the recommendations of the monitor unless the district shows, to the satisfaction of the state board, good cause for not doing so. The district shall notify the state board if it disputes a recommendation and the state board shall hold a public hearing to hear and decide the dispute within 30 days of receiving the notice.

(3) The district and the citizens' oversight committee shall have an opportunity to appear at the public hearing and provide written or oral testimony to support their positions.

(4) A recommendation of the monitor that is mandatory, as opposed to prohibitory, shall be stayed during the time the dispute is before the state board.

(5) Upon the conclusion of the public hearing, the state board shall direct the district to implement the recommendations of the monitor if it finds, in consultation with the Office of Public School Construction, that the district lacks good cause for failing to implement the recommendations.

37690. All reports required by a district to be submitted to a state agency pursuant to this article shall be made available to the public. An interested party shall be permitted to submit comments regarding a report to the appropriate state agency within a reasonable time following the submission of the report to that state agency.

37691. A Concept 6 program conducted pursuant to this article is eligible for apportionment from the State School Fund.

37692. On or before July 1, 2008, the department, in consultation with the Office of Public School Construction, shall conduct a survey to determine whether the school districts operating Concept 6 programs will phase out the program by the 2009–10 fiscal year and shall submit a copy of the results of the survey to the Assembly Committee on Education, the Senate Committee on Education, and the Department of Finance. Based on the survey, the Legislature shall determine whether to repeal the authority to operate a Concept 6 program prior to July 1, 2012.

37693. (a) A Concept 6 program may not be operated after July 1, 2012, or such earlier date as may be prescribed by the Legislature pursuant to Section 37692.

(b) Although the Concept 6 program is authorized until July 1, 2012, it is the intent of the Legislature that all school districts eliminate the Concept 6 program as soon as practicable.

37694. A school district operating a Concept 6 program is exempt from the requirements of Section 37202.

37695. (a) A pupil participating in a Concept 6 program shall not be credited with more than one day of attendance in any calendar day, except as permitted in Section 46140.

(b) Average daily attendance generated at a regular elementary, junior high, or high school operated pursuant to this article shall be calculated as prescribed in subdivision (a) of Section 41601.

(c) Notwithstanding Section 37640, subdivision (a) of Section 41601, and any other law, the number of days taught in one or more late entry makeup classes in which a pupil in a Concept 6 program is enrolled shall be disregarded, at the option of a school district, in calculating the number of days taught in the calculation of average daily attendance of that district for any school year, if the pupil entered the Concept 6 program after September 1 of that school year and the track in which the pupil is enrolled began instruction in July or August of that school year. For purposes of this subdivision, ''late entry makeup class'' is a class in which a pupil in a Concept 6 program is enrolled in order to compensate for the pupil's late enrollment in that program. The number of days taught that are disregarded under this subdivision shall not exceed the number of schooldays occurring in the school year prior to September 1 in the track in which the pupil is enrolled, reduced by the number of schooldays, if any, occurring in a program operating under the traditional school calendar in which the pupil was enrolled in that school district in the same school year prior to the date upon which the pupil is first enrolled in the Concept 6 program.

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 reduce overcrowding in public schools and to implement the settlement agreement in the case of Williams v. State of California (Super. Ct., San Francisco, 2004, No. CGC-00-312236) as soon as possible, it is necessary for this act to take effect immediately.

CHAPTER 902

An act to amend Sections 42127.6, 44225.6, 44258.9, 44274, 44275.3, 44325, 44453, 44511, 52055.640, and 52059 of the Education Code, relating to teachers, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 2004. Filed with
Secretary of State September 29, 2004.]

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

SECTION 1. Section 42127.6 of the Education Code is amended to read:

42127.6. (a) (1) A school district shall provide the county superintendent of schools with a copy of a study, report, evaluation, or audit that was commissioned by the district, the county superintendent, the Superintendent of Public Instruction, and state control agencies and that contains evidence that the school district is showing fiscal distress under the standards and criteria adopted in Section 33127, or a report on the school district by the County Office Fiscal Crisis and Management Assistance Team or any regional team created pursuant to subdivision (i) of Section 42127.8. The county superintendent shall review and consider studies, reports, evaluations, or audits of the school district that contain evidence that the school district is demonstrating fiscal distress under the standards and criteria adopted in Section 33127 or that contain a finding by an external reviewer that more than three of the 15 most common predictors of a school district needing intervention, as determined by the County Office Fiscal Crisis and Management Assistance Team, are present. If these findings are made, the county superintendent shall investigate the financial condition of the school district and determine if the school district may be unable to meet its financial obligations for the current or two subsequent fiscal years, or should receive a qualified or negative interim financial certification pursuant to Section 42131. If at any time during the fiscal year the county superintendent of schools determines that a school district may be unable to meet its financial obligations for the current or two subsequent fiscal years or if a school district has a qualified or negative certification pursuant to Section 42131, he or she shall notify the governing board of the school district and the Superintendent of Public Instruction in writing of that determination and the basis for the determination. The notification shall include the assumptions used in making the determination and shall be available to the public. The county superintendent of schools shall report to the Superintendent of Public Instruction on the financial condition of the school district and his or her proposed remedial actions and shall do at least one of the following and all actions that are necessary to ensure that the district meets its financial obligations:

(A) Assign a fiscal expert, paid for by the county superintendent, to advise the district on its financial problems.

(B) Conduct a study of the financial and budgetary conditions of the district that includes, but is not limited to, a review of internal controls. If, in the course of this review, the county superintendent determines that his or her office requires analytical assistance or expertise that is not available through the district, he or she may employ, on a short-term basis, with the approval of the Superintendent of Public Instruction, staff, including certified public accountants, to provide the assistance and expertise. The school district shall pay 75 percent and the county office of education shall pay 25 percent of these staff costs.

(C) Direct the school district to submit a financial projection of all fund and cash balances of the district as of June 30 of the current year and subsequent fiscal years as he or she requires.

(D) Require the district to encumber all contracts and other obligations, to prepare appropriate cashflow analyses and monthly or quarterly budget revisions, and to appropriately record all receivables and payables.

(E) Direct the district to submit a proposal for addressing the fiscal conditions that resulted in the determination that the district may not be able to meet its financial obligations.

(F) Withhold compensation of the members of the governing board and the district superintendent for failure to provide requested financial information. This action may be appealed to the Superintendent of Public Instruction pursuant to subdivision (b).

(G) Assign the Fiscal Crisis and Management Assistance Team to review teacher hiring practices, teacher retention rate, percentage of provision of highly qualified teachers, and the extent of teacher misassignment in the school district and provide the district with recommendations to streamline and improve the teacher hiring process, teacher retention rate, extent of teacher misassignment, and provision of highly qualified teachers. If a review team is assigned to a school district, the district shall follow the recommendations of the team, unless the district shows good cause for failure to do so. The Fiscal Crisis and Management Assistance Team may not recommend an action that would abrogate a contract that governs employment.

(2) Any contract entered into by a county superintendent of schools for the purposes of this subdivision is subject to the approval of the Superintendent of Public Instruction.

(3) An employee of a school district who provides information regarding improper governmental activity, as defined in Section 44112, is entitled to the protection provided pursuant to Article 5 (commencing with Section 44110) of Chapter 1 of Part 25.

(b) Within five days of the county superintendent making the determination specified in subdivision (a), a school district may appeal the basis of the determination and any of the proposed actions that the

county superintendent has indicated that he or she will take to further examine the financial condition of the district. The Superintendent of Public Instruction shall sustain or deny any or all parts of the appeal within 10 days.

(c) If, after taking the actions identified in subdivision (a), the county superintendent determines that a district will be unable to meet its financial obligations for the current or subsequent fiscal year, he or she shall notify the school district governing board and the Superintendent of Public Instruction in writing of that determination and the basis for that determination. The notification shall include the assumptions used in making the determination and shall be provided to the superintendent of the school district and parent and teacher organization of the district.

(d) Within five days of the county superintendent making the determination specified in subdivision (c), a school district may appeal that determination to the Superintendent of Public Instruction. The Superintendent shall sustain or deny the appeal within 10 days. If the governing board of the school district appeals the determination, the county superintendent of schools may stay any action of the governing board that he or she determines is inconsistent with the ability of the district to meet its financial obligations for the current or subsequent fiscal year until resolution of the appeal by the Superintendent of Public Instruction.

(e) If the appeal described in subdivision (d) is denied or not filed, or if the district has a negative certification pursuant to Section 42131, the county superintendent, in consultation with the Superintendent of Public Instruction, shall take at least one of the actions described in paragraphs (1) to (5), inclusive, and all actions that are necessary to ensure that the district meets its financial obligations and shall make a report to the Superintendent about the financial condition of the district and remedial actions proposed by the county superintendent.

(1) Develop and impose, in consultation with the Superintendent of Public Instruction and the school district governing board, a budget revision that will enable the district to meet its financial obligations in the current fiscal year.

(2) Stay or rescind any action that is determined to be inconsistent with the ability of the school district to meet its obligations for the current or subsequent fiscal year. This includes any actions up to the point that the subsequent year's budget is approved by the county superintendent of schools. The county superintendent of schools shall inform the school district governing board in writing of his or her justification for any exercise of authority under this paragraph.

(3) Assist in developing, in consultation with the governing board of the school district, a financial plan that will enable the district to meet its future obligations.

(4) Assist in developing, in consultation with the governing board of the school district, a budget for the subsequent fiscal year. If necessary, the county superintendent of schools shall continue to work with the governing board of the school district until the budget for the subsequent year is adopted.

(5) As necessary, appoint a fiscal adviser to perform any or all of the duties prescribed by this section on his or her behalf.

(f) Any action taken by the county superintendent of schools pursuant to paragraph (1) or (2) of subdivision (e) shall be accompanied by a notification that shall include the actions to be taken, the reasons for the actions, and the assumptions used to support the necessity for these actions.

(g) This section does not authorize the county superintendent to abrogate any provision of a collective bargaining agreement that was entered into by a school district prior to the date upon which the county superintendent of schools assumed authority pursuant to subdivision (e).

(h) The school district shall pay 75 percent and the county office of education shall pay 25 percent of the administrative expenses incurred pursuant to subdivision (e) or costs associated with improving the district's financial management practices. The Superintendent of Public Instruction shall develop and distribute to affected school districts and county offices of education advisory guidelines regarding the appropriate amount of administrative expenses charged pursuant to this subdivision.

(i) Notwithstanding Section 42647 or 42650 or any other law, a county treasurer shall not honor any warrant if, pursuant to Sections 42127 to 42127.5, inclusive, or pursuant to this section, the county superintendent or the Superintendent of Public Instruction, as appropriate, has disapproved that warrant or the order on school district funds for which a warrant was prepared.

(j) Effective upon the certification of the election results for a newly organized school district pursuant to Section 35763, the county superintendent of schools may exercise any of the powers and duties of this section regarding the reorganized school district and the other affected school districts until the reorganized school district becomes effective for all purposes in accordance with Article 4 (commencing with Section 35530) of Chapter 3 of Part 21.

(k) The Superintendent of Public Instruction shall monitor the efforts of a county office of education in exercising its authority under this section and may exercise any of that authority if he or she finds that the actions of the county superintendent of schools are not effective in resolving the financial problems of the school district. Upon a decision to exercise the powers of the county superintendent of schools, the county superintendent of schools is relieved of those powers assumed by

the Superintendent. In addition to the actions taken by the county superintendent, the Superintendent of Public Instruction shall take further actions to ensure the long-term fiscal stability of the district. The county office of education shall reimburse the Superintendent of Public Instruction for all of his or her costs in exercising his or her authority under this subdivision. The Superintendent of Public Instruction shall promptly notify the county superintendent of schools, the county board of education, the superintendent of the school district, the governing board of the school district, the appropriate policy and fiscal committees of each house of the Legislature, and the Department of Finance of his or her decision to exercise the authority of the county superintendent of schools.

SEC. 2. Section 44225.6 of the Education Code is amended to read:

44225.6. (a) By April 15 of each year, the commission shall report to the Legislature and the Governor on the availability of teachers in California. This report shall include the following information:

(1) The number of individuals recommended for credentials by institutions of higher education and the type of credential or certificate, or both, for which they were recommended, including certificates issued pursuant to Sections 42253.3 and 42253.4.

(2) The number of individuals recommended by school districts operating district internship programs and the type of credential or certificate, or both, for which they were recommended, including certificates issued pursuant to Sections 42253.3 and 42253.4.

(3) The number of individuals receiving an initial credential based on a program completed outside of California and the type of credential or certificate, or both, for which they were recommended, including certificates issued pursuant to Sections 42253.3 and 42253.4.

(4) The number of individuals receiving an emergency permit, credential waiver, or other authorization that does not meet the definition of a highly qualified teacher under the No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.).

(5) By county and school district, the number of individuals serving in the following capacities and as a percentage of the total number of individuals serving as teachers in the county and school district:

(A) University internship.

(B) District internship.

(C) Preinternship.

(D) Emergency permit.

(E) Credential waiver.

(F) Preliminary or professional clear credential.

(G) An authorization, other than those listed in this paragraph, that does not meet the definition of a highly qualified teacher under the No

Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.) by category of authorization.

(H) Certificate issued pursuant to Section 42253.3.

(I) Certificate issued pursuant to Section 42253.4.

(J) Certificate of completion issued pursuant to Section 42253.10.

(6) The specific subjects and teaching areas in which there are a sufficient number of new holders of credentials to fill the positions currently held by individuals with emergency permits.

(b) The commission shall make this report available to school districts and county offices of education to assist them in the recruitment of credentialed teachers and shall make the report and supporting data publicly available on the commission's Web site.

(c) A common measure of whether teacher preparation programs are meeting the challenge of preparing increasing numbers of new teachers is the number of teaching credentials awarded. The number of teaching credentials recommended by these programs and awarded by the commission are indicators of the productivity of teacher preparation programs. The commission shall include in the report prepared for the Legislature and Governor pursuant to subdivision (a) the total number of teaching credentials recommended by all accredited teacher preparation programs authorized by the commission and the number recommended by each of the following:

(1) The University of California system.

(2) The California State University system.

(3) Independent colleges and universities that offer teacher preparation programs approved by the commission.

(4) Other institutions that offer teacher preparation programs approved by the commission.

SEC. 3. Section 44258.9 of the Education Code is amended to read:

44258.9. (a) The Legislature finds that continued monitoring of teacher assignments by county superintendents of schools will ensure that the rate of teacher misassignment remains low. To the extent possible and with funds provided for that purpose, each county superintendent of schools shall perform the duties specified in subdivisions (b) and (c).

(b) (1) Each county superintendent of schools shall annually monitor and review school district certificated employee assignment practices according to the following priority:

(A) Schools and school districts that are likely to have problems with teacher misassignment and teacher vacancies based on past experience or other available information. The county superintendent of schools shall give priority to schools ranked in deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index, as defined in subdivision (b)

of Section 17592.70, if those schools are not currently under review through a state or federal intervention program.

(B) All other schools on a four-year cycle.

(2) Each county superintendent of schools shall investigate school and district efforts to ensure that any credentialed teacher serving in an assignment requiring a certificate issued pursuant to Section 44253.3, 44253.4, or 44253.7 or training pursuant to Section 44253.10 completes the necessary requirements for these certificates or completes the required training.

(3) The Commission on Teacher Credentialing shall be responsible for the monitoring and review of those counties or cities and counties in which there is a single school district, including the Counties of Alpine, Amador, Del Norte, Mariposa, Plumas, and Sierra, and the City and County of San Francisco. All information related to the misassignment of certificated personnel and teacher vacancies shall be submitted to each affected district within 30 calendar days of the monitoring activity.

(c) County superintendents of schools shall submit an annual report to the Commission on Teacher Credentialing and the department summarizing the results of all assignment monitoring and reviews. These reports shall include, but need not be limited to, the following:

(1) The numbers of teachers assigned and types of assignments made by the governing board of a school district under the authority of Sections 44256, 44258.2, and 44263.

(2) Information on actions taken by local committees on assignment, including the number of assignments authorized, subject areas into which committee-authorized teachers are assigned, and evidence of any departures from the implementation plans presented to the county superintendent by school districts.

(3) Information on each school district reviewed regarding misassignments of certificated personnel, including efforts to eliminate these misassignments.

(4) Information on certificated employee assignment practices in schools ranked in deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index, as defined in subdivision (b) of Section 17592.70, to ensure that, at a minimum, in any class in these schools in which 20 percent or more pupils are English learners the assigned teacher possesses a certificate issued pursuant to Section 44253.3 or 44253.4 or has completed training pursuant to Section 44253.10 or is otherwise authorized by statute.

(5) After consultation with representatives of county superintendents of schools, other information as may be determined to be needed by the Commission on Teacher Credentialing.

(d) The Commission on Teacher Credentialing shall submit biennial reports to the Legislature concerning teacher assignments and

misassignments which shall be based, in part, on the annual reports of the county superintendents of schools.

(e) (1) The Commission on Teacher Credentialing shall establish reasonable sanctions for the misassignment of credential holders.

Prior to the implementation of regulations establishing sanctions, the Commission on Teacher Credentialing shall engage in a variety of activities designed to inform school administrators, teachers, and personnel within the offices of county superintendents of schools of the regulations and statutes affecting the assignment of certificated personnel. These activities shall include the preparation of instructive brochures and the holding of regional workshops.

(2) Commencing July 1, 1989, any certificated person who is required by an administrative superior to accept an assignment for which he or she has no legal authorization shall, after exhausting any existing local remedies, notify the county superintendent of schools in writing of the illegal assignment. The county superintendent of schools shall, within 15 working days, advise the affected certificated person concerning the legality of his or her assignment. There shall be no adverse action taken against a certificated person who files a notification of misassignment with the county superintendent of schools. During the period of the misassignment, the certificated person who files a written notification with the county superintendent of schools shall be exempt from the provisions of Section 45034. If it is determined that a misassignment has taken place, any performance evaluation of the employee under Sections 44660 to 44664, inclusive, in any misassigned subject shall be nullified.

(3) The county superintendent of schools shall notify, through the office of the district superintendent, any certificated school administrator responsible for the assignment of a certificated person to a position for which he or she has no legal authorization of the misassignment and shall advise him or her to correct the assignment within 30 calendar days. The county superintendent of schools shall notify the Commission on Teacher Credentialing of the misassignment if the certificated school administrator has not corrected the misassignment within 30 days of the initial notification, or if the certificated school administrator has not described, in writing, within the 30-day period, to the county superintendent of schools the extraordinary circumstances which make this correction impossible.

(4) The county superintendent of schools shall notify any superintendent of a school district in which 5 percent or more of all certificated teachers in the secondary schools are found to be misassigned of the misassignments and shall advise him or her to correct the misassignments within 120 calendar days. The county superintendent of schools shall notify the Commission on Teacher

Credentialing of the misassignments if the school district superintendent has not corrected the misassignments within 120 days of the initial notification, or if the school district superintendent of schools has not described, in writing, within the 120-day period, to the county superintendent of schools the extraordinary circumstances which make this correction impossible.

(f) An applicant for a professional administrative service credential shall be required to demonstrate knowledge of existing credentialing laws, including knowledge of assignment authorizations.

(g) The Superintendent of Public Instruction shall submit a summary of the reports submitted by county superintendents pursuant to subdivision (c) to the Legislature. The Legislature may hold, within a reasonable period after receipt of the summary, public hearings on pupil access to teachers and to related statutory provisions. The Legislature may also assign one or more of the standing committees or a joint committee, to determine the following:

(1) The effectiveness of the reviews required pursuant to this section.

(2) The extent, if any, of vacancies and misassignments.

(3) The need, if any, to assist schools ranked in deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index, as defined in subdivision (b) of Section 17592.70, to eliminate vacancies and misassignments.

SEC. 4. Section 44274 of the Education Code is amended to read:

44274. (a) The commission shall conduct periodic reviews to determine whether any state has established teacher preparation standards, including standards for teachers of English learners, that are at least comparable and equivalent to teacher preparation standards in California.

(b) If the commission determines, pursuant to subdivision (a), that the teacher preparation standards established by any state are at least comparable and equivalent to teacher preparation standards in California, the commission shall initiate negotiations with that state to provide reciprocity in teacher credentialing.

(c) (1) The commission shall grant an appropriate credential to any applicant from another state who completes teacher preparation that is at least comparable and equivalent to preparation that meets teacher preparation standards in California, as determined by the commission pursuant to this section, if the applicant meets the requirements of California for the basic skills proficiency test pursuant to subdivision (d) of Section 44275.3 and teacher fitness pursuant to Sections 44339, 44340, and 44341.

(2) If the commission determines that the teacher licensing body of another state requires an applicant to demonstrate a level of basic skills proficiency that is at least comparable to passage of the state basic skills

proficiency test, applicants from that state are not required to meet the requirements of California for the basic skills proficiency test.

(d) A reciprocity agreement established pursuant to subdivision (b) shall not exempt an out-of-state applicant from submitting an identification card pursuant to Section 44340 and obtaining a certificate of clearance, credential, permit, or certificate of eligibility from the commission.

(e) The commission shall issue credentials to out-of-state prepared teachers based on all of the following:

(1) Equivalent preparation received outside of this state.

(2) Equivalent reading instruction, as determined by the reviews conducted pursuant to Section 44274.1.

(3) Equivalent subject matter programs or credential emphasis programs, as determined by the reviews conducted pursuant to Section 44274.1.

SEC. 5. Section 44275.3 of the Education Code is amended to read:

44275.3. Notwithstanding any other provision of law:

(a) It is the intent of the Legislature that both of the following occur:

(1) That this section provide flexibility to enable school districts to recruit credentialed out-of-state elementary, secondary, and special education teachers to relocate to California.

(2) That any and all teachers hired in California pursuant to this section fully meet the requirements of the State of California or requirements deemed to be equivalent.

(b) Notwithstanding any other provision of this chapter, the commission shall issue a five-year preliminary multiple subject or single subject teaching credential or a five-year preliminary education specialist credential to any out-of-state prepared teacher who meets all of the following requirements:

(1) Possesses a baccalaureate degree from a regionally accredited institution of higher education.

(2) Completed a teacher preparation program at a regionally accredited institution of higher education.

(3) Successfully completes any criminal background check conducted pursuant to Sections 44339, 44340, and 44341 for credentialing purposes.

(4) Earned or qualified for a corresponding elementary, secondary, or special education teaching credential based upon the out-of-state teacher preparation program. The commission shall determine the area of concentration of the California education specialist credential based on the special education program completed out of state.

(c) An out-of-state prepared teacher who has been issued a California five-year preliminary multiple subject, single subject, or education specialist teaching credential shall pass the state basic skills proficiency

test, administered by the commission pursuant to Section 44252, within one year of the issuance date of the credential in order to be eligible to continue teaching pursuant to this section, unless the commission determines that the teacher licensing body of the state in which the teacher completed his or her preparation requires an applicant to demonstrate a level of basic skills proficiency that is at least comparable to passage of the state basic skills proficiency test.

(d) The commission shall issue a professional clear credential to an out-of-state prepared teacher who has met the requirements in subdivision (b) and who meets the following requirements:

(1) Passage of the state basic skills proficiency test administered by the commission pursuant to Section 44252, unless the commission determines that the teacher licensing body of the state in which the teacher completed his or her preparation requires an applicant to demonstrate a level of basic skills proficiency that is at least comparable to passage of the state basic skills proficiency test.

(2) Demonstration of subject matter competence by completion of coursework or an examination approved by the commission pursuant to paragraph (5) of subdivision (b) of Section 44259. Completion of subject matter in another state that is determined by the commission to be comparable or equivalent pursuant to paragraph (1) of subdivision (a) of Section 44274.1 shall meet this requirement.

(3) Completion of a course, or for multiple subject and education specialist credentials, a course or an examination, on the various methods of teaching reading pursuant to paragraph (4) of subdivision (b) of Section 44259. Completion of coursework in another state determined by the commission to be comparable and equivalent pursuant to paragraph (2) of subdivision (a) of Section 44274.1 shall meet this requirement.

(4) Completion of a course or examination on the provisions and principles of the United States Constitution pursuant to paragraph (6) of subdivision (b) of Section 44259. Completion of coursework in another state determined by the commission to be comparable and equivalent shall meet this requirement.

(5) With the exception of the education specialist credential, completion of study and field experience in methods of delivering appropriate educational services to pupils with exceptional needs in regular education programs. Completion of coursework in another state determined by the commission to be comparable and equivalent shall meet this requirement.

(6) Completion of the study of computer-based technology through demonstration by course or examination of basic competence in the use of computers in the classroom, and study of advanced computer-based technology, including the uses of technology in educational settings

pursuant to subparagraph (C) of paragraph (3) of subdivision (c) of Section 44259. Completion of coursework in another state determined by the commission to be comparable and equivalent shall meet this requirement.

(7) Completion of a fifth-year program at a regionally accredited institution of higher education, except that the commission shall eliminate this requirement for any candidate who has completed an induction program for beginning teachers. Completion of preparation in another state determined by the commission to be comparable and equivalent to the requirement specified by this paragraph shall meet this requirement.

(8) A teacher holding a specialist credential pursuant to this section shall complete the requirements for nonspecial education pedagogy and a supervised field experience program in general education pursuant to Section 44265.

(9) A teacher holding a specialist credential pursuant to this section shall complete a program for the Professional Level II credential accredited by the Committee on Accreditation, established pursuant to Section 44373, and the requirements specified in this subdivision.

SEC. 6. 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. 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 on Teacher Credentialing shall ensure that each district internship program in California provides program elements to its interns as required by the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.) and its implementing regulations.

SEC. 7. Section 44453 of the Education Code is amended to read:

44453. (a) For admission to all teaching internship programs authorized by this article, an applicant shall have a baccalaureate or higher degree from a regionally accredited institution of postsecondary education and shall pass a subject matter examination as provided in Section 44280 or complete a commission-approved subject matter program as provided in Section 44310.

(b) The Commission on Teacher Credentialing shall ensure that each university internship program in California provides program elements to its interns as required by the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.) and its implementing regulations.

SEC. 8. Section 44511 of the Education Code is amended to read:

44511. (a) From funds appropriated for the purpose of this article, the Superintendent of Public Instruction shall award incentive funding to provide schoolsite administrators with instruction and training in areas including, but not limited to, the following:

(1) School financial and personnel management. This training shall specifically provide instruction related to personnel management, including hiring, recruitment, and retention practices and misassignments of certificated personnel.

(2) Core academic standards.

(3) Curriculum frameworks and instructional materials aligned to the state academic standards, including ensuring the provisions of textbooks and instructional materials as defined in Section 60119.

(4) The use of pupil assessment instruments, specific ways of mastering the use of assessment data from the Standardized Testing and Reporting Program, and school management technology to improve pupil performance.

(5) The provision of instructional leadership and management strategies regarding the use of instructional technology to improve pupil performance.

(6) Extension of the knowledge, skills, and abilities acquired in the preliminary administrative preparation program that is designed to strengthen the ability of administrators to serve all pupils in the school to which they are assigned.

(b) The additional instruction and training areas that may be considered to improve pupil learning and achievement based upon the needs of participating schoolsite administrators, include pedagogies of learning, motivating pupil learning, collaboration, conflict resolution, diversity, parental involvement, employee relations, and the creation of effective learning and workplace environments.

(c) All local education agencies are eligible to apply for funds appropriated for the purpose of this article.

SEC. 9. Section 52055.640 of the Education Code is amended to read:

52055.640. (a) As a condition of the receipt of funds for the initial and each subsequent year of funding pursuant to this article and to ensure that the school is progressing towards meeting the goals of each of the essential components of its school action plan, each year the school district shall submit a report to the Superintendent of Public Instruction that includes the following:

(1) The academic improvement of pupils within the participating school as measured by the tests under Section 60640 and the progress made towards achieving English language proficiency as measured by the English language development test administered pursuant to Section 60810.

(2) The improvement of distribution of experienced teachers holding a valid California teaching credential across the district. Commencing with the 2004–05 fiscal year, for a school district with a school initially applying to participate in the program on or after July 1, 2004, the report shall include whether at least 80 percent of the teachers assigned to the school are credentialed and the number of classes in which 20 percent or more pupils are English learners and assigned to teachers who do not possess a certificate issued pursuant to Section 44253.3, 44253.4, or 44253.7 or have not completed training pursuant to Section 44253.10, or are not otherwise authorized by statute to be assigned to those classes. This paragraph does not relieve a school district from complying with state or federal law regarding teachers of English learners.

(3) The availability of instructional materials in core content areas that are aligned with the academic content and performance standards, including textbooks, for each pupil, including English language learners.

(4) The number of parents and guardians presently involved at each participating schoolsite as compared to the number participating at the beginning of the program.

(5) The number of pupils attending afterschool, tutoring, or homework assistance programs.

(6) For participating secondary schools, the number of pupils who are enrolled in and successfully completing advanced placement courses, by type, and requirements for admission to the University of California or the California State University, including courses in algebra, biology, and United States or world history.

(b) The report on the pupil literacy and achievement component shall be disaggregated by numerically significant subgroups, as defined in Section 52052, and English language learners and have a focus on improved scores in reading and mathematics as measured by the following:

(1) The Academic Performance Index, including the data collected pursuant to tests that are part of the Standardized Testing and Reporting Program and the writing sample that is part of that program.

(2) The results of the primary language test pursuant to Section 60640.

(3) Graduation rates, when the methodology for collecting this data has been confirmed to be valid and reliable.

(4) In addition, a school may use locally developed assessments to assist it in determining the pupil progress in academic literacy and achievement.

(c) The report on the quality of staff component shall include, but not be limited to, the following information:

(1) The number of teachers at the schoolsite holding a valid California teaching credential or district or university intern certificate or credential compared to those teachers at the same schoolsite holding a preintern certificate, emergency permit, or waiver.

(2) The number and ratio of teachers across the district holding a valid California teaching credential or district or university intern certificate or credential compared to those holding a preintern certificate, emergency permit, or waiver.

(3) The number of principals having completed training pursuant to Article 4.6 (commencing with Section 44510) of Chapter 3 of Part 25.

(4) The number of principals by credential type or years of experience and length of time at the schoolsite by years.

(d) The report on the parental involvement component shall include explicit involvement strategies being implemented at the schoolsite that are directly linked to activities supporting pupil academic achievement and verification that the schoolsite has developed a school-parent compact as required by Section 51101.

(e) All comparisons made in the reports required pursuant to this section shall be based on baseline data provided by the district and schoolsite in the action plan that is certified and submitted with the initial application.

(f) To the extent that data is already reported to the Superintendent of Public Instruction, a school district need not include the data in the reports submitted pursuant to this section.

(g) Before submitting the reports required pursuant to this section, the school district shall, at a regularly scheduled public meeting of the governing board, review a participating school's progress towards achieving those goals.

SEC. 10. Section 52059 of the Education Code is amended to read:

52059. (a) For purposes of complying with the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.), a Statewide System of School Support shall be established by the department to provide a statewide system of intensive and sustained support and technical assistance for school districts, county offices of education, and schools in need of improvement. The system shall consist of regional consortia, which may include county offices of education and school districts, that work collaboratively with school districts and county offices of education to meet the needs of school districts and schools in need of improvement.

(b) The system shall provide assistance to school districts and schools in need of improvement by:

(1) Reviewing and analyzing all facets of a school's operation, including the the following:

(A) The design and operation of the instructional program offered by the school.

(B) The recruitment, hiring, and retention of principals, teachers, and other staff, including vacancy issues. The system may request the assistance of the Fiscal Crisis and Management Assistance Team to review school district or school recruitment, hiring, and retention practices.

(C) The roles and responsibilities of district and school management personnel.

(2) Assisting the school in developing recommendations for improving pupil performance and school operations.

(3) Assisting schools and school districts in efforts to eliminate misassignments of certificated personnel.

(c) In carrying out this article, the department shall ensure that support is provided in the following order of priority:

(1) To school districts or county offices of education with schools that are subject to corrective action under paragraph (7) of subsection (b) of Section 6316 of Title 20 of the United States Code.

(2) To school districts or county offices of education with schools that are identified as being in need of improvement pursuant to subsection (b) of Section 6316 of Title 20 of the United States Code.

(3) To provide support and assistance to school districts and county offices of education with schools participating under the No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.) that need support and assistance to achieve the purposes of that act.

(4) To provide support and assistance to other school districts and county offices of education with schools participating in a program carried out under this chapter.

(d) For purposes of this article, all references to schools shall include charter schools.

(e) Funds shall be distributed under this article based on the number of schools and enrollment of those schools in each region that have been identified as being in need of improvement pursuant to Section 6316 of Title 20 of the United States Code, or are participating in the programs conducted under this chapter.

SEC. 11. The Legislature encourages school districts to provide all the schools it maintains that are ranked in deciles 1 to 3, inclusive, of the Academic Performance Index first priority to review resumes and job applications received by the district from credentialed teachers. It is the intent of the Legislature that after all schools maintained by the district that are ranked in deciles 1 to 3, inclusive, of the Academic Performance Index have had the opportunity to review the resumes and job applications received by the district from credentialed teachers, a school district make the resumes and applications available to other schools maintained by the district. It is not the intent of the Legislature to require, as a condition of employment, that an applicant teacher accept an offer from a school ranked in any of deciles 1 to 3, inclusive, of the Academic Performance Index.

SEC. 12. In developing the annual budget for the 2006–07 fiscal year and subsequent fiscal years, the Department of Finance, in consultation with the State Department of Education, shall review the implementation of legislation enacted pursuant to the settlement agreement in the case of Williams v. State of California (Super. Ct., San Francisco, No. CGC-00-312236) and shall propose whether to use the Academic Performance Index rankings of later years in determining the applicability of legislation limited to schools ranked in deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index.

SEC. 13. By June 30, 2005, the Commission on Teacher Credentialing shall report to the Legislature and the Governor on the comparability and equivalency of the preparation of teachers in other states in the areas of basic skills proficiency and fifth-year programs,

including, but not limited to, the number of states that have met these requirements.

SEC. 14. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

SEC. 15. 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 pupils in the public schools have access to qualified teachers and to implement the settlement agreement in the case of Williams v. State of California (Super. Ct., San Francisco, No. CGC-00-312236) as soon as possible, it is necessary for this act to take effect immediately.

CHAPTER 903

An act to amend Section 35186 of the Education Code, relating to schools, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 2004.]

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

SECTION 1. Section 35186 of the Education Code, as proposed to be added by Senate Bill 550 of the 2003–04 Regular Session, is amended to read:

35186. (a) A school district shall use the uniform complaint process it has adopted as required by Chapter 5.1 (commencing with Section 4600) of Title 5 of the California Code of Regulations, with modifications, as necessary, to help identify and resolve any deficiencies related to instructional materials, emergency or urgent facilities conditions that pose a threat to the health and safety of pupils or staff, and teacher vacancy or misassignment.

(1) A complaint may be filed anonymously. A complainant who identifies himself or herself is entitled to a response if he or she indicates that a response is requested. A complaint form shall include a space to

mark to indicate whether a response is requested. All complaints and responses are public records.

(2) The complaint form shall specify the location for filing a complaint. A complainant may add as much text to explain the complaint as he or she wishes.

(3) A complaint shall be filed with the principal of the school or his or her designee. A complaint about problems beyond the authority of the school principal shall be forwarded in a timely manner but not to exceed 10 working days to the appropriate school district official for resolution.

(b) The principal or the designee of the district superintendent, as applicable, shall make all reasonable efforts to investigate any problem within his or her authority. The principal or designee of the district superintendent shall remedy a valid complaint within a reasonable time period but not to exceed 30 working days from the date the complaint was received. The principal or designee of the district superintendent shall report to the complainant the resolution of the complaint within 45 working days of the initial filing. If the principal makes this report, the principal shall also report the same information in the same timeframe to the designee of the district superintendent.

(c) A complainant not satisfied with the resolution of the principal or the designee of the district superintendent has the right to describe the complaint to the governing board of the school district at a regularly scheduled hearing of the governing board. As to complaints involving a condition of a facility that poses an emergency or urgent threat, as defined in paragraph (1) of subdivision (c) of Section 17592.72, a complainant who is not satisfied with the resolution proffered by the principal or the designee of the district superintendent has the right to file an appeal to the Superintendent of Public Instruction, who shall provide a written report to the State Board of Education describing the basis for the complaint and, as appropriate, a proposed remedy for the issue described in the complaint.

(d) A school district shall report summarized data on the nature and resolution of all complaints on a quarterly basis to the county superintendent of schools and the governing board of the school district. The summaries shall be publicly reported on a quarterly basis at a regularly scheduled meeting of the governing board of the school district. The report shall include the number of complaints by general subject area with the number of resolved and unresolved complaints. The complaints and written responses shall be available as public records.

(e) The procedure required pursuant to this section is intended to address all of the following:

(1) A complaint related to instructional materials as follows:

(A) A pupil, including an English learner, does not have standards-aligned textbooks or instructional materials or state adopted or district adopted textbooks or other required instructional material to use in class.

(B) A pupil does not have access to instructional materials to use at home or after school in order to complete required homework assignments.

(C) Textbooks or instructional materials are in poor or unusable condition, have missing pages, or are unreadable due to damage.

(2) A complaint related to teacher vacancy or misassignment as follows:

(A) A semester begins and a certificated teacher is not assigned to teach the class.

(B) A teacher who lacks credentials or training to teach English learners is assigned to teach a class with more than 20 percent English learner pupils in the class. This subparagraph does not relieve a school district from complying with state or federal law regarding teachers of English learners.

(C) A teacher is assigned to teach a class for which the teacher lacks subject matter competency.

(3) A complaint related to the condition of facilities that pose an emergency or urgent threat to the health or safety of pupils or staff as defined in paragraph (1) of subdivision (c) of Section 17592.72 and any other emergency conditions the school district determines appropriate.

(f) In order to identify appropriate subjects of complaint, a notice shall be posted in each classroom in each school in the school district notifying parents and guardians of the following:

(1) There should be sufficient textbooks and instructional materials. For there to be sufficient textbooks and instructional materials each pupil, including English learners, must have a textbook or instructional materials, or both, to use in class and to take home to complete required homework assignments.

(2) School facilities must be clean, safe, and maintained in good repair.

(3) The location at which to obtain a form to file a complaint in case of a shortage. Posting a notice downloadable from the Web site of the department shall satisfy this requirement.

(g) A local educational agency shall establish local policies and procedures, post notices, and implement this section on or before January 1, 2005.

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

(1) ''Good repair'' has the same meaning as specified in subdivision (d) of Section 17002.

(2) ''Misassignment'' means the placement of a certificated employee in a teaching or services position for which the employee does not hold a legally recognized certificate or credential or the placement of a certificated employee in a teaching or services position that the employee is not otherwise authorized by statute to hold.

(3) ''Teacher vacancy'' means a vacant teacher position as defined in subparagraph (A) of paragraph (5) of subdivision (b) of Section 33126.

SEC. 2. This act shall become operative only if Senate Bill 550 of the 2003–04 Regular Session is enacted.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that all pupils in the public schools are housed in adequately maintained school facilities and to implement the settlement agreement in the case of Williams v. State of California (Super. Ct., San Francisco, No. CGC-00-312236) as soon as possible, it is necessary for this act to take effect immediately.

CHAPTER 904

An act to add Chapter 13.4 (commencing with Section 25980) to Division 20 of the Health and Safety Code, relating to force fed birds.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 2004.]

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

SECTION 1. Chapter 13.4 (commencing with Section 25980) is added to Division 20 of the Health and Safety Code, to read:

CHAPTER 13.4. FORCE FED BIRDS

25980. For purposes of this section, the following terms have the following meanings:

(a) A bird includes, but is not limited to, a duck or goose.

(b) Force feeding a bird means a process that causes the bird to consume more food than a typical bird of the same species would consume voluntarily. Force feeding methods include, but are not limited to, delivering feed through a tube or other device inserted into the bird's esophagus.

25981. A person may not force feed a bird for the purpose of enlarging the bird's liver beyond normal size, or hire another person to do so.

25982. A product may not be sold in California if it is the result of force feeding a bird for the purpose of enlarging the bird's liver beyond normal size.

25983. (a) A peace officer, officer of a humane society as qualified under Section 14502 or 14503 of the Corporations Code, or officer of an animal control or animal regulation department of a public agency, as qualified under Section 830.9 of the Penal Code, may issue a citation to a person or entity that violates this chapter.

(b) A citation issued under this section shall require the person cited to pay a civil penalty in an amount up to one thousand dollars ($1,000) for each violation, and up to one thousand dollars ($1,000) for each day the violation continues. The civil penalty shall be payable to the local agency initiating the proceedings to enforce this chapter to offset the costs to the agency related to court proceedings.

(c) A person or entity that violates this chapter may be prosecuted by the district attorney of the county in which the violation occurred, or by the city attorney of the city in which the violation occurred.

25984. (a) Sections 25980, 25981, 25982, and 25983 of this chapter shall become operative on July 1, 2012.

(b) (1) No civil or criminal cause of action shall arise on or after January 1, 2005, nor shall a pending action commenced prior to January 1, 2005, be pursued under any provision of law against a person or entity for engaging, prior to July 1, 2012, in any act prohibited by this chapter.

(2) The limited immunity from liability provided by this subdivision shall not extend to acts prohibited by this chapter that are committed on or after July 1, 2012.

(3) The protections afforded by this subdivision shall only apply to persons or entities who were engaged in, or controlled by persons or entities who were engaged in, agricultural practices that involved force feeding birds at the time of the enactment of this chapter.

(c) It is the express intention of the Legislature, by delaying the operative date of provisions of this chapter pursuant to subdivision (a) until July 1, 2012, to allow a seven and one-half year period for persons or entities engaged in agricultural practices that include raising and selling force fed birds to modify their business practices.

CHAPTER 905

An act to amend Section 815.3 of the Civil Code, to amend Sections 65040.2, 65092, 65351, 65352, and 65560 of, and to add Sections 65352.3, 65352.4, and 65562.5 to the Government Code, relating to traditional tribal cultural places.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 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) Current state law provides a limited measure of protection for California Native American prehistoric, archaeological, cultural, spiritual, and ceremonial places.

(2) Existing law provides limited protection for Native American sanctified cemeteries, places of worship, religious, ceremonial sites, sacred shrines, historic or prehistoric ruins, burial grounds, archaeological or historic sites, inscriptions made by Native Americans at those sites, archaeological or historic Native American rock art, and archaeological or historic features of Native American historic, cultural, and sacred sites.

(3) Native American places of prehistoric, archaeological, cultural, spiritual, and ceremonial importance reflect the tribes' continuing cultural ties to the land and to their traditional heritages.

(4) Many of these historical, cultural, and religious sites are not located within the current boundaries of California Native American reservations and rancherias, and therefore are not covered by the protectionist policies of tribal governments.

(b) In recognition of California Native American tribal sovereignty and the unique relationship between California local governments and California tribal governments, it is the intent of the Legislature, in enacting this act, to accomplish all of the following:

(1) Recognize that California Native American prehistoric, archaeological, cultural, spiritual, and ceremonial places are essential elements in tribal cultural traditions, heritages, and identities.

(2) Establish meaningful consultations between California Native American tribal governments and California local governments at the earliest possible point in the local government land use planning process so that these places can be identified and considered.

(3) Establish government-to-government consultations regarding potential means to preserve those places, determine the level of

necessary confidentiality of their specific location, and develop proper treatment and management plans.

(4) Ensure that local and tribal governments have information available early in the land use planning process to avoid potential conflicts over the preservation of California Native American prehistoric, archaeological, cultural, spiritual, and ceremonial places.

(5) Enable California Native American tribes to manage and act as caretakers of California Native American prehistoric, archaeological, cultural, spiritual, and ceremonial places.

(6) Encourage local governments to consider preservation of California Native American prehistoric, archaeological, cultural, spiritual, and ceremonial places in their land use planning processes by placing them in open space.

(7) Encourage local governments to consider the cultural aspects of California Native American prehistoric, archaeological, cultural, spiritual, and ceremonial places early in land use planning processes.

SEC. 2. Section 815.3 of the Civil Code is amended to read:

815.3. Only the following entities or organizations may acquire and hold conservation easements:

(a) A tax-exempt nonprofit organization qualified under Section 501(c)(3) of the Internal Revenue Code and qualified to do business in this state which has as its primary purpose the preservation, protection, or enhancement of land in its natural, scenic, historical, agricultural, forested, or open-space condition or use.

(b) The state or any city, county, city and county, district, or other state or local governmental entity, if otherwise authorized to acquire and hold title to real property and if the conservation easement is voluntarily conveyed. No local governmental entity may condition the issuance of an entitlement for use on the applicant's granting of a conservation easement pursuant to this chapter.

(c) A federally recognized California Native American tribe or a nonfederally recognized California Native American tribe that is on the contact list maintained by the Native American Heritage Commission to protect a California Native American prehistoric, archaeological, cultural, spiritual, or ceremonial place, if the conservation easement is voluntarily conveyed.

SEC. 3. Section 65040.2 of the Government Code is amended to read:

65040.2. (a) In connection with its responsibilities under subdivision (*l*) of Section 65040, the office shall develop and adopt guidelines for the preparation and content of the mandatory elements required in city and county general plans by Article 5 (commencing with Section 65300) of Chapter 3. For purposes of this section, the guidelines prepared pursuant to Section 50459 of the Health and Safety Code shall

be the guidelines for the housing element required by Section 65302. In the event that additional elements are hereafter required in city and county general plans by Article 5 (commencing with Section 65300) of Chapter 3, the office shall adopt guidelines for those elements within six months of the effective date of the legislation requiring those additional elements.

(b) The office may request from each state department and agency, as it deems appropriate, and the department or agency shall provide, technical assistance in readopting, amending, or repealing the guidelines.

(c) The guidelines shall be advisory to each city and county in order to provide assistance in preparing and maintaining their respective general plans.

(d) The guidelines shall contain the guidelines for addressing environmental justice matters developed pursuant to Section 65040.12.

(e) The guidelines shall contain advice including recommendations for best practices to allow for collaborative land use planning of adjacent civilian and military lands and facilities. The guidelines shall encourage enhanced land use compatibility between civilian lands and any adjacent or nearby military facilities through the examination of potential impacts upon one another.

(f) The guidelines shall contain advice for addressing the effects of civilian development on military readiness activities carried out on all of the following:

(1) Military installations.

(2) Military operating areas.

(3) Military training areas.

(4) Military training routes.

(5) Military airspace.

(6) Other territory adjacent to those installations and areas.

(g) By March 1, 2005, the guidelines shall contain advice, developed in consultation with the Native American Heritage Commission, for consulting with California Native American tribes for all of the following:

(1) The preservation of, or the mitigation of impacts to, places, features, and objects described in Sections 5097.9 and 5097.995 of the Public Resources Code.

(2) Procedures for identifying through the Native American Heritage Commission the appropriate California Native American tribes.

(3) Procedures for continuing to protect the confidentiality of information concerning the specific identity, location, character, and use of those places, features, and objects.

(4) Procedures to facilitate voluntary landowner participation to preserve and protect the specific identity, location, character, and use of those places, features, and objects.

(h) The office shall provide for regular review and revision of the guidelines established pursuant to this section.

SEC. 4. Section 65092 of the Government Code is amended to read:

65092. (a) When a provision of this title requires notice of a public hearing to be given pursuant to Section 65090 or 65091, the notice shall also be mailed or delivered at least 10 days prior to the hearing to any person who has filed a written request for notice with either the clerk of the governing body or with any other person designated by the governing body to receive these requests. The local agency may charge a fee which is reasonably related to the costs of providing this service and the local agency may require each request to be annually renewed.

(b) As used in this chapter, ''person'' includes a California Native American tribe that is on the contact list maintained by the Native American Heritage Commission.

SEC. 5. Section 65351 of the Government Code is amended to read:

65351. During the preparation or amendment of the general plan, the planning agency shall provide opportunities for the involvement of citizens California Native American Indian tribes, public agencies, public utility companies, and civic, education, and other community groups, through public hearings and any other means the city or county deems appropriate.

SEC. 6. Section 65352 of the Government Code is amended to read:

65352. (a) Prior to action by a legislative body to adopt or substantially amend a general plan, the planning agency shall refer the proposed action to all of the following entities:

(1) A city or county, within or abutting the area covered by the proposal, and a special district that may be significantly affected by the proposed action, as determined by the planning agency.

(2) An elementary, high school, or unified school district within the area covered by the proposed action.

(3) The local agency formation commission.

(4) An areawide planning agency whose operations may be significantly affected by the proposed action, as determined by the planning agency.

(5) A federal agency if its operations or lands within its jurisdiction may be significantly affected by the proposed action, as determined by the planning agency.

(6) A public water system, as defined in Section 116275 of the Health and Safety Code, with 3,000 or more service connections, that serves water to customers within the area covered by the proposal. The public water system shall have at least 45 days to comment on the proposed

plan, in accordance with subdivision (b), and to provide the planning agency with the information set forth in Section 65352.5.

(7) The Bay Area Air Quality Management District for a proposed action within the boundaries of the district.

(8) On and after March 1, 2005, a California Native American tribe, that is on the contact list maintained by the Native American Heritage Commission, with traditional lands located within the city or county's jurisdiction.

(b) Each entity receiving a proposed general plan or amendment of a general plan pursuant to this section shall have 45 days from the date the referring agency mails it or delivers it in which to comment unless a longer period is specified by the planning agency.

(c) (1) This section is directory, not mandatory, and the failure to refer a proposed action to the other entities specified in this section does not affect the validity of the action, if adopted.

(2) To the extent that the requirements of this section conflict with the requirements of Chapter 4.4 (commencing with Section 65919), the requirements of Chapter 4.4 shall prevail.

SEC. 7. Section 65352.3 is added to the Government Code, to read:

65352.3. (a) (1) Prior to the adoption or any amendment of a city or county's general plan, proposed on or after March 1, 2005, the city or county shall conduct consultations with California Native American tribes that are on the contact list maintained by the Native American Heritage Commission for the purpose of preserving or mitigating impacts to places, features, and objects described in Sections 5097.9 and 5097.995 of the Public Resources Code that are located within the city or county's jurisdiction.

(2) From the date on which a California Native American tribe is contacted by a city or county pursuant to this subdivision, the tribe has 90 days in which to request a consultation, unless a shorter timeframe has been agreed to by that tribe.

(b) Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Section 65040.2, the city or county shall protect the confidentiality of information concerning the specific identity, location, character, and use of those places, features, and objects.

SEC. 8. Section 65352.4 is added to the Government Code, to read:

65352.4. For purposes of Section 65351, 65352.3, and 65562.5, ''consultation'' means the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties' cultural values and, where feasible, seeking agreement. Consultation between government agencies and Native American tribes shall be conducted in a way that is mutually respectful of each party's sovereignty. Consultation shall also recognize

the tribes' potential needs for confidentiality with respect to places that have traditional tribal cultural significance.

SEC. 9. Section 65560 of the Government Code is amended to read:

65560. (a) ''Local open-space plan'' is the open-space element of a county or city general plan adopted by the board or council, either as the local open-space plan or as the interim local open-space plan adopted pursuant to Section 65563.

(b) ''Open-space land'' is any parcel or area of land or water that is essentially unimproved and devoted to an open-space use as defined in this section, and that is designated on a local, regional or state open-space plan as any of the following:

(1) Open space for the preservation of natural resources including, but not limited to, areas required for the preservation of plant and animal life, including habitat for fish and wildlife species; areas required for ecologic and other scientific study purposes; rivers, streams, bays and estuaries; areas adjacent to military installations, military training routes, and restricted airspace that can provide additional buffer zones to military activities and complement the resource values of the military lands; and coastal beaches, lakeshores, banks of rivers and streams, and watershed lands.

(2) Open space used for the managed production of resources, including but not limited to, forest lands, rangeland, agricultural lands and areas of economic importance for the production of food or fiber; areas required for recharge of ground water basins; bays, estuaries, marshes, rivers and streams which are important for the management of commercial fisheries; and areas containing major mineral deposits, including those in short supply.

(3) Open space for outdoor recreation, including, but not limited to, areas of outstanding scenic, historic and cultural value; areas particularly suited for park and recreation purposes, including access to lakeshores, beaches, and rivers and streams; and areas which serve as links between major recreation and open-space reservations, including utility easements, banks of rivers and streams, trails, and scenic highway corridors.

(4) Open space for public health and safety, including, but not limited to, areas which require special management or regulation because of hazardous or special conditions such as earthquake fault zones, unstable soil areas, flood plains, watersheds, areas presenting high fire risks, areas required for the protection of water quality and water reservoirs and areas required for the protection and enhancement of air quality.

(5) Open space for the protection of places, features, and objects described in Sections 5097.9 and 5097.995 of the Public Resources Code.

SEC. 10. Section 65562.5 is added to the Government Code, to read:

65562.5. On and after March 1, 2005, if land designated, or proposed to be designated as open space, contains a place, feature, or object described in Sections 5097.9 and 5097.995 of the Public Resources Code, the city or county in which the place, feature, or object is located shall conduct consultations with the California Native American tribe, if any, that has given notice pursuant to Section 65092 for the purpose of determining the level of confidentiality required to protect the specific identity, location, character, or use of the place, feature, or object and for the purpose of developing treatment with appropriate dignity of the place, feature, or object in any corresponding management plan.

SEC. 11. 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 906

An act to amend Sections 65352, 65404, 65940, and 65944 of the Government Code, relating to land use.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 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) Military installations and their mission are important to the California economy.

(2) The military needs military installations, low-level flight paths, and special use airspace to train personnel and test weapons systems effectively.

(3) The development of civilian land uses may impair the military's ability to train personnel and test weapons systems.

(4) Creating a process to identify and assist in resolving potential conflicts between land uses and the military's need for military installations, low-level flight paths, and special use airspace is essential to California's public health, safety, and welfare.

(b) Accordingly, the Legislature finds and declares that it is the policy of the state to cooperate with the military to do all of the following:

(1) Consider the effects of civilian land uses that may be incompatible with the military's use of its assets.

(2) Create processes to resolve conflicts between civilian land uses and the military's use of its assets.

SEC. 2. Section 65352 of the Government Code is amended to read:

65352. (a) Prior to action by a legislative body to adopt or substantially amend a general plan, the planning agency shall refer the proposed action to all of the following entities:

(1) Any city or county, within or abutting the area covered by the proposal, and any special district that may be significantly affected by the proposed action, as determined by the planning agency.

(2) Any elementary, high school, or unified school district within the area covered by the proposed action.

(3) The local agency formation commission.

(4) Any areawide planning agency whose operations may be significantly affected by the proposed action, as determined by the planning agency.

(5) Any federal agency if its operations or lands within its jurisdiction may be significantly affected by the proposed action, as determined by the planning agency.

(6) (A) The branches of the United States Armed Forces that have provided the Office of Planning and Research with a California mailing address pursuant to subdivision (d) of Section 65944 when the proposed action is within 1,000 feet of a military installation, or lies within special use airspace, or beneath a low-level flight path, as defined in Section 21098 of the Public Resources Code, provided that the United States Department of Defense provides electronic maps of low-level flight paths, special use airspace, and military installations at a scale and in an electronic format that is acceptable to the Office of Planning and Research.

(B) Within 30 days of a determination by the Office of Planning and Research that the information provided by the Department of Defense is sufficient and in an acceptable scale and format, the office shall notify

cities, counties, and cities and counties of the availability of the information on the Internet. Cities, counties, and cities and counties shall comply with subparagraph (A) within 30 days of receiving this notice from the office.

(7) Any public water system, as defined in Section 116275 of the Health and Safety Code, with 3,000 or more service connections, that serves water to customers within the area covered by the proposal. The public water system shall have at least 45 days to comment on the proposed plan, in accordance with subdivision (b), and to provide the planning agency with the information set forth in Section 65352.5.

(8) The Bay Area Air Quality Management District for a proposed action within the boundaries of the district.

(b) Each entity receiving a proposed general plan or amendment of a general plan pursuant to this section shall have 45 days from the date the referring agency mails it or delivers it in which to comment unless a longer period is specified by the planning agency.

(c) (1) This section is directory, not mandatory, and the failure to refer a proposed action to the other entities specified in this section does not affect the validity of the action, if adopted.

(2) To the extent that the requirements of this section conflict with the requirements of Chapter 4.4 (commencing with Section 65919), the requirements of Chapter 4.4 shall prevail.

SEC. 2.5. Section 65352 of the Government Code is amended to read:

65352. (a) Prior to action by a legislative body to adopt or substantially amend a general plan, the planning agency shall refer the proposed action to all of the following entities:

(1) A city or county, within or abutting the area covered by the proposal, and any special district that may be significantly affected by the proposed action, as determined by the planning agency.

(2) An elementary, high school, or unified school district within the area covered by the proposed action.

(3) The local agency formation commission.

(4) An areawide planning agency whose operations may be significantly affected by the proposed action, as determined by the planning agency.

(5) A federal agency if its operations or lands within its jurisdiction may be significantly affected by the proposed action, as determined by the planning agency.

(6) (A) The branches of the United States Armed Forces that have provided the Office of Planning and Research with a California mailing address pursuant to subdivision (d) of Section 65944 when the proposed action is within 1,000 feet of a military installation, or lies within special use airspace, or beneath a low-level flight path, as defined in Section

21098 of the Public Resources Code, provided that the United States Department of Defense provides electronic maps of low-level flight paths, special use airspace, and military installations at a scale and in an electronic format that is acceptable to the Office of Planning and Research.

(B) Within 30 days of a determination by the Office of Planning and Research that the information provided by the Department of Defense is sufficient and in an acceptable scale and format, the office shall notify cities, counties, and cities and counties of the availability of the information on the Internet. Cities, counties, and cities and counties shall comply with subparagraph (A) within 30 days of receiving this notice from the office.

(7) A public water system, as defined in Section 116275 of the Health and Safety Code, with 3,000 or more service connections, that serves water to customers within the area covered by the proposal. The public water system shall have at least 45 days to comment on the proposed plan, in accordance with subdivision (b), and to provide the planning agency with the information set forth in Section 65352.5.

(8) The Bay Area Air Quality Management District for a proposed action within the boundaries of the district.

(9) On and after March 1, 2005, a California Native American tribe, that is on the contact list maintained by the Native American Heritage Commission, with traditional lands located within the city or county's jurisdiction.

(b) Each entity receiving a proposed general plan or amendment of a general plan pursuant to this section shall have 45 days from the date the referring agency mails it or delivers it in which to comment unless a longer period is specified by the planning agency.

(c) (1) This section is directory, not mandatory, and the failure to refer a proposed action to the other entities specified in this section does not affect the validity of the action, if adopted.

(2) To the extent that the requirements of this section conflict with the requirements of Chapter 4.4 (commencing with Section 65919), the requirements of Chapter 4.4 shall prevail.

SEC. 3. Section 65404 of the Government Code is amended to read:

65404. (a) On or before January 1, 2005, the Governor shall develop processes to do all of the following:

(1) Resolve conflicting requirements of two or more state agencies for a local plan, permit, or development project.

(2) Resolve conflicts between state functional plans.

(3) Resolve conflicts between state infrastructure projects.

(4) Provide, to the extent permitted under federal law, for the availability of mediation between a branch of the United States Armed Forces, a local agency, and a project applicant, in circumstances where

a conflict arises between a proposed land use within special use airspace beneath low-level flight paths, or within 1,000 feet of a military installation.

(b) The process may be requested by a local agency, project applicant, or one or more state agencies. The mediation process identified in paragraph (4) of subdivision (a) may also be requested by a branch of the United States Armed Forces.

SEC. 4. Section 65940 of the Government Code is amended to read:

65940. (a) Each state agency and each local agency shall compile one or more lists that shall specify in detail the information that will be required from any applicant for a development project. Each local agency shall revise the list of information required from an applicant to include a certification of compliance with Section 65962.5, and the statement of application required by Section 65943. Copies of the information, including the statement of application required by Section 65943, shall be made available to all applicants for development projects and to any person who requests the information.

(b) (1) The list of information required from any applicant shall include, where applicable, identification of whether the proposed project is located within 1,000 feet of a military installation, beneath a low-level flight path or within special use airspace as defined in Section 21098 of the Public Resources Code, and within an urbanized area as defined in Section 65944.

(2) The information described in paragraph (1) shall be based on information provided by the Office of Planning and Research pursuant to paragraph (2) of subdivision (d) as of the date of the application. Cities, counties, and cities and counties shall comply with paragraph (1) within 30 days of receiving this notice from the office.

(c) (1) A city, county, or city and county that is not beneath a low-level flight path or not within special use airspace and does not contain a military installation is not required to change its list of information required from applicants to comply with subdivision (b).

(2) A city, county, or city and county that is entirely urbanized, as defined in subdivision (e) of Section 65944, with the exception of a jurisdiction that contains a military installation, is not required to change its list of information required from applicants to comply with subdivision (b).

(d) (1) Subdivision (b) as it relates to the identification of special use airspace, low-level flight paths, military installations, and urbanized areas shall not be operative until the United States Department of Defense provides electronic maps of low-level flight paths, special use airspace, and military installations, at a scale and in an electronic format that is acceptable to the Office of Planning and Research.

(2) Within 30 days of a determination by the Office of Planning and Research that the information provided by the Department of Defense is sufficient and in an acceptable scale and format, the office shall notify cities, counties, and cities and counties of the availability of the information on the Internet.

SEC. 5. Section 65944 of the Government Code is amended to read:

65944. (a) After a public agency accepts an application as complete, the agency shall not subsequently request of an applicant any new or additional information which was not specified in the list prepared pursuant to Section 65940. The agency may, in the course of processing the application, request the applicant to clarify, amplify, correct, or otherwise supplement the information required for the application.

(b) The provisions of subdivision (a) shall not be construed as requiring an applicant to submit with his or her initial application the entirety of the information which a public agency may require in order to take final action on the application. Prior to accepting an application, each public agency shall inform the applicant of any information included in the list prepared pursuant to Section 65940 which will subsequently be required from the applicant in order to complete final action on the application.

(c) This section shall not be construed as limiting the ability of a public agency to request and obtain information which may be needed in order to comply with the provisions of Division 13 (commencing with Section 21000) of the Public Resources Code.

(d) (1) After a public agency accepts an application as complete, and if the project applicant has identified that the proposed project is located within 1,000 feet of a military installation or within special use airspace or beneath a low-level flight path in accordance with Section 65940, the public agency shall provide a copy of the complete application to any branch of the United States Armed Forces that has provided the Office of Planning and Research with a single California mailing address within the state for the delivery of a copy of these applications. This subdivision shall apply only to development applications submitted to a public agency 30 days after the Office of Planning and Research has notified cities, counties, and cities and counties of the availability of Department of Defense information on the Internet pursuant to subdivision (d) of Section 65940.

(2) Except for a project within 1,000 feet of a military installation, the public agency is not required to provide a copy of the application if the project is located entirely in an ''urbanized area.'' An urbanized area is any urban location that meets the definition used by the United State Department of Commerce's Bureau of Census for ''urban'' and includes locations with core census block groups containing at least 1,000 people

per square mile and surrounding census block groups containing at least 500 people per square mile.

(e) Upon receipt of a copy of the application as required in subdivision (d), any branch of the United States Armed Forces may request consultation with the public agency and the project applicant to discuss the effects of the proposed project on military installations, low-level flight paths, or special use airspace, and potential alternatives and mitigation measures.

(f) (1) Subdivisions (d), (e), and (f) as these relate to low-level flight paths, special use airspace, and urbanized areas shall not be operative until the United States Department of Defense provides electronic maps of low-level flight paths, special use airspace, and military installations, at a scale and in an electronic format that is acceptable to the Office of Planning and Research.

(2) Within 30 days of a determination by the Office of Planning and Research that the information provided by the Department of Defense is sufficient and in an acceptable scale and format, the office shall notify cities, counties, and cities and counties of the availability of the information on the Internet. Cities, counties, and cities and counties shall comply with subdivision (d) within 30 days of receiving this notice from the office.

SEC. 6. Section 2.5 of this bill incorporates amendments to Section 65352 of the Government Code proposed by both this bill and SB 18. 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 65352 of the Government Code, and (3) this bill is enacted after SB 18, in which case Section 2 of this bill shall not become operative.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because 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 907

An act to amend Sections 63010, 65053.5, 65053.6, 65302, and 65560 of, and to add and repeal Chapter 4 (commencing with Section 13998) of Part 4.7 of Division 3 of Title 2 of, the Government Code, and to repeal Part 14 (commencing with Section 37980) of Division 24 of the Health and Safety Code, and to amend Section 8 of Chapter 971 of the Statutes

of 2002, relating to economic development, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 2004.]

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

SECTION 1. Chapter 4 (commencing with Section 13998) is added to Part 4.7 of Division 3 of Title 2 of the Government Code, to read:

CHAPTER 4. MILITARY AND AEROSPACE SUPPORT

13998. This chapter shall be known and may be cited as the Military and Aerospace Support Act.

13998.1. 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-six billion dollars ($36,000,000,000) 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 support be consolidated in the Business, Transportation and Housing Agency.

13998.2. (a) 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 Office of Military and Aerospace Support is hereby created in the Business, Transportation and Housing Agency.

(b) The Office of Military and Aerospace Support shall be in the charge of a director who is under the direction of the Secretary of Business, Transportation and Housing. The director shall be appointed, upon recommendation by the secretary, by the Governor. The director shall hold office at the pleasure of the secretary, and shall receive a salary fixed by the secretary with the approval of the Department of Personnel Administration.

(c) It shall be the purpose of the office to provide a central clearinghouse for all defense retention, conversion, and base reuse activities in the state and to interact and communicate with military installations in the state.

13998.3. (a) The office may establish a Military Advisory Committee to provide input, information, technical advice or other comments to the office on military related matters, including, but not limited to, active Department of Defense installations in California and defense conversion issues. The office may call meetings of the committee at times and locations when necessary. Participation by committee members is voluntary and there is no reimbursement for per diem or expenses.

(b) The committee membership may include, but is not limited to, representatives from the following:

(1) The Secretary of Business, Transportation and Housing.

(2) The Secretary for Environmental Protection.

(3) The Director of Employment Development.
(4) The Director of Planning and Research.
(5) The Chairperson of the State Energy Resources, Conservation and Development Commission.
(6) The Director of Transportation.
(7) The Executive Director of the Employment Training Panel.
(8) The Secretary of the Resources Agency.
(9) The President of the University of California.
(10) The Chancellor of the California State University.
(11) The Chancellor of the California Community Colleges.
(12) The President pro Tempore of the Senate.
(13) The Speaker of the Assembly.
(14) Any other legislative offices, state agencies, local governments, industry, civic, and research organizations that may have an interest in defense related activities.

13998.5. The Office of Military and Aerospace Support shall do all of the following:

(a) Develop and recommend to the Governor and the Legislature a strategic plan for state and local defense retention and conversion efforts. The plan shall address the state's role in assisting communities with potential base closures and those impacted by previous closures. The office may coordinate with other state agencies, local groups, and interested organizations on this strategic plan to retain current Department of Defense installations, facilities, bases, and related civilian activities.

(b) Conduct outreach to entities and parties involved in defense retention and conversion across the state and provide a network to facilitate assistance and coordination for all defense retention and conversion activities within the state.

(c) Help develop and coordinate state retention advocacy efforts on the federal level.

(d) (1) Conduct an evaluation of existing state retention and conversion programs and provide the Legislature recommendations on the continuation of existing programs, including, but not limited to, the possible elimination or alteration of those programs. This evaluation shall be transmitted to the Legislature.

(2) The office may provide recommendations to the Legislature on the necessity of new programs for defense retention and adequate funding levels.

(e) Utilize and update the plan prepared by the Defense Conversion Council as it existed on December 31, 1998, to minimize California's loss of bases and jobs in future rounds of base closures. This plan shall include, but not be limited to, all of the following:

(1) Identification of major installations in California.

(2) Determination of how best to defend existing bases and base employment in this state.

(3) Coordination of retention activities with communities that may face base closures.

(4) Development of data and analyses on bases in this state.

(5) Coordination with the congressional delegation, the Legislature, and the Governor. With the consent of the appropriate authority, the office may temporarily borrow technical, policy, and administrative staff from other state agencies, including the Legislature.

(f) Serve as the primary state liaison with the Department of Defense and its installations in this state. In order to maximize the mission use of the installations, the Office of Military and Aerospace Support shall assist in resolving any disputes or issues between the Department of Defense and state entities.

(g) Review actions or programs by state agencies that may affect or impact Department of Defense installations or the state's military base retention and reuse activities and recommend to the Governor and the Legislature actions that may be taken to resolve or prevent similar problems in the future.

(h) Where funds and resources are available, the office may undertake all of the following activities:

(1) Provide a central clearinghouse for all base retention or conversion assistance activities, including, but not limited to, employee training programs and regulation review and permit streamlining.

(2) Provide technical assistance to communities with potential or existing base closure activities.

(3) Provide a central clearinghouse for all defense retention and conversion funding, regulations, and application procedures for federal or state grants.

(4) Serve as a central clearinghouse for input and information, including needs, issues, and recommendations from businesses, industry representatives, labor, local government, and communities relative to retention and conversion efforts.

(5) Identify available state and federal resources to assist businesses, workers, communities, and educational institutions that may have a stake in retention and conversion activities.

(6) Provide one-stop coordination, maintain and disseminate information, standardize state endorsement procedures, and develop fast-track review procedures for proposals seeking state funds to match federal defense conversion funding programs.

(7) Maintain and establish databases in such fields as defense-related companies, industry organization proposals for the state and federal defense industry, community assistance, training, and base retention, and provide electronic access to the databases.

13998.6. (a) The Office of Military and Aerospace Support shall apply for grants and may seek contributions from private industry to fund its operations.

(b) The office shall actively solicit and accept funds from industry, foundations, or other sources to support its operations and responsibilities under this chapter.

(c) Any private funds the office accepts shall be deposited into the Military and Aerospace Support Account, which is hereby established in the Special Deposit Fund in the State Treasury. The office may, upon the approval of the Secretary of Business, Transportation and Housing, expend moneys in the account, upon appropriation by the Legislature in the annual Budget Act, for the purposes of this chapter and for no other purpose. Records of funds received and expenditures made pursuant to this section shall be subject to public disclosure. A report describing the receipt and expenditure of these funds shall be submitted to the Department of Finance, the Assembly Committee on Budget, and the Senate Committee on Budget and Fiscal Review at least biennially.

13998.7. In addition to the duties specified in Section 13998.5, the office shall prepare a study considering strategies for the long-term protection of lands adjacent to military bases from development that would be incompatible with the continuing missions of those bases. The study shall include the effects of local land use encroachment, environmental impact considerations, and population growth issues. The study shall recommend basic criteria to assist local governments in identifying lands where incompatible development may adversely impact the long-term missions of these bases. The study shall also identify potential mechanisms, including recommendations for changes in law at the local or state level, to address these issues. In conducting this study, the office may use the Naval Air Station at Lemoore and Edwards Air Force Base as case studies.

13998.8. The Business, Transportation and Housing Agency with input and assistance from the office, shall establish a military support 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, with at least 50 percent of that match being in the form of funding.

13998.9. 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.

13998.10. This chapter 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 63010 of the Government Code is amended to read:

63010. For purposes of this division, the following words and terms shall have the following meanings unless the context clearly indicates or requires another or different meaning or intent:

(a) ''Act'' means the Bergeson-Peace Infrastructure and Economic Development Bank Act.

(b) ''Bank'' means the California Infrastructure and Economic Development Bank.

(c) ''Board'' or ''bank board'' means the Board of Directors of the California Infrastructure and Economic Development Bank.

(d) ''Bond purchase agreement'' means a contractual agreement executed between the bank and a sponsor, or a special purpose trust authorized by the bank or a sponsor, or both, whereby the bank or special purpose trust authorized by the bank agrees to purchase bonds of the sponsor for retention or sale.

(e) ''Bonds'' means bonds, including structured, senior, and subordinated bonds or other securities; loans; notes, including bond, revenue, tax or grant anticipation notes; commercial paper; floating rate and variable maturity securities; and any other evidences of indebtedness or ownership, including certificates of participation or beneficial interest, asset backed certificates, or lease-purchase or installment purchase agreements, whether taxable or excludable from gross income for federal income taxation purposes.

(f) ''Cost,'' as applied to a project or portion thereof financed under this division, means all or any part of the cost of construction, renovation, and acquisition of all lands, structures, real or personal property, rights, rights-of-way, franchises, licenses, easements, and interests acquired or used for a project; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which the buildings or structures may be moved; the cost of all machinery, equipment, and financing charges; interest prior to, during, and for a period after completion of construction, renovation, or acquisition, as determined by the bank; provisions for working capital; reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations, and improvements; and the cost of architectural, engineering, financial and legal services, plans, specifications, estimates, administrative expenses, and other expenses necessary or incidental to determining the feasibility of any project or incidental to the construction, acquisition, or financing of any project, and transition costs in the case of an electrical corporation.

(g) ''Economic development facilities'' means real and personal property, structures, buildings, equipment, and supporting components thereof that are used to provide industrial, recreational, research, commercial, utility, or service enterprise facilities, community, educational, cultural, or social welfare facilities and any parts or combinations thereof, and all facilities or infrastructure necessary or desirable in connection therewith, including provision for working capital, but shall not include any housing.

(h) ''Electrical corporation'' has the meaning set forth in Section 218 of the Public Utilities Code.

(i) ''Executive director'' means the Executive Director of the California Infrastructure and Economic Development Bank appointed pursuant to Section 63021.

(j) ''Financial assistance'' in connection with a project, includes, but is not limited to, any combination of grants, loans, the proceeds of bonds issued by the bank or special purpose trust, insurance, guarantees or other credit enhancements or liquidity facilities, and contributions of money, property, labor, or other things of value, as may be approved by resolution of the board or the sponsor, or both; the purchase or retention of bank bonds, the bonds of a sponsor for their retention or for sale by the bank, or the issuance of bank bonds or the bonds of a special purpose trust used to fund the cost of a project for which a sponsor is directly or indirectly liable, including, but not limited to, bonds, the security for which is provided in whole or in part pursuant to the powers granted by Section 63025; bonds for which the bank has provided a guarantee or enhancement, including, but not limited to, the purchase of the

subordinated bonds of the sponsor, the subordinated bonds of a special purpose trust, or the retention of the subordinated bonds of the bank pursuant to Chapter 4 (commencing with Section 63060); or any other type of assistance deemed appropriate by the bank or the sponsor, except that no direct loans shall be made to nonpublic entities other than in connection with the issuance of rate reduction bonds pursuant to a financing order or in connection with a financing for an economic development facility.

For purposes of this subdivision, ''grant'' does not include grants made by the bank except when acting as an agent or intermediary for the distribution or packaging of financing available from federal, private, or other public sources.

(k) ''Financing order'' has the meaning set forth in Section 840 of the Public Utilities Code.

(*l*) ''Guarantee trust fund'' means the California Infrastructure Guarantee Trust Fund.

(m) ''Infrastructure bank fund'' means the California Infrastructure and Economic Development Bank Fund.

(n) ''Loan agreement'' means a contractual agreement executed between the bank or a special purpose trust and a sponsor that provides that the bank or special purpose trust will loan funds to the sponsor and that the sponsor will repay the principal and pay the interest and redemption premium, if any, on the loan.

(o) ''Participating party'' means any person, company, corporation, association, state or municipal governmental entity, partnership, firm, or other entity or group of entities, whether organized for profit or not for profit, engaged in business or operations within the state and that applies for financing from the bank in conjunction with a sponsor for the purpose of implementing a project. However, in the case of a project relating to the financing of transition costs or the acquisition of transition property, or both, on the request of an electrical corporation, or in connection with a financing for an economic development facility, or for the financing of insurance claims, the participating party shall be deemed to be the same entity as the sponsor for the financing.

(p) ''Project'' means designing, acquiring, planning, permitting, entitling, constructing, improving, extending, restoring, financing, and generally developing public development facilities or economic development facilities within the state or financing transition costs or the acquisition of transition property, or both, upon approval of a financing order by the Public Utilities Commission, as provided in Article 5.5 (commencing with Section 840) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code.

(q) ''Public development facilities'' means real and personal property, structures, conveyances, equipment, thoroughfares, buildings,

and supporting components thereof, excluding any housing, that are directly related to providing the following:

(1) ''City streets'' including any street, avenue, boulevard, road, parkway, drive, or other way that is any of the following:

(A) An existing municipal roadway.

(B) Is shown upon a plat approved pursuant to law and includes the land between the street lines, whether improved or unimproved, and may comprise pavement, bridges, shoulders, gutters, curbs, guardrails, sidewalks, parking areas, benches, fountains, plantings, lighting systems, and other areas within the street lines, as well as equipment and facilities used in the cleaning, grading, clearance, maintenance, and upkeep thereof.

(2) ''County highways'' including any county highway as defined in Section 25 of the Streets and Highways Code, that includes the land between the highway lines, whether improved or unimproved, and may comprise pavement, bridges, shoulders, gutters, curbs, guardrails, sidewalks, parking areas, benches, fountains, plantings, lighting systems, and other areas within the street lines, as well as equipment and facilities used in the cleaning, grading, clearance, maintenance, and upkeep thereof.

(3) ''Drainage, water supply, and flood control'' including, but not limited to, ditches, canals, levees, pumps, dams, conduits, pipes, storm sewers, and dikes necessary to keep or direct water away from people, equipment, buildings, and other protected areas as may be established by lawful authority, as well as the acquisition, improvement, maintenance, and management of floodplain areas and all equipment used in the maintenance and operation of the foregoing.

(4) ''Educational facilities'' including libraries, child care facilities, including, but not limited to, day care facilities, and employment training facilities.

(5) ''Environmental mitigation measures'' including required construction or modification of public infrastructure and purchase and installation of pollution control and noise abatement equipment.

(6) ''Parks and recreational facilities'' including local parks, recreational property and equipment, parkways and property.

(7) ''Port facilities'' including docks, harbors, ports of entry, piers, ships, small boat harbors and marinas, and any other facilities, additions, or improvements in connection therewith.

(8) ''Power and communications'' including facilities for the transmission or distribution of electrical energy, natural gas, and telephone and telecommunications service.

(9) ''Public transit'' including air and rail transport of goods, airports, guideways, vehicles, rights-of-way, passenger stations, maintenance and storage yards, and related structures, including public parking

facilities, equipment used to provide or enhance transportation by bus, rail, ferry, or other conveyance, either publicly or privately owned, that provides to the public general or special service on a regular and continuing basis.

(10) ''Sewage collection and treatment'' including pipes, pumps, and conduits that collect wastewater from residential, manufacturing, and commercial establishments, the equipment, structures, and facilities used in treating wastewater to reduce or eliminate impurities or contaminants, and the facilities used in disposing of, or transporting, remaining sludge, as well as all equipment used in the maintenance and operation of the foregoing.

(11) ''Solid waste collection and disposal'' including vehicles, vehicle-compatible waste receptacles, transfer stations, recycling centers, sanitary landfills, and waste conversion facilities necessary to remove solid waste, except that which is hazardous as defined by law, from its point of origin.

(12) ''Water treatment and distribution'' including facilities in which water is purified and otherwise treated to meet residential, manufacturing, or commercial purposes and the conduits, pipes, and pumps that transport it to places of use.

(13) ''Defense conversion'' including, but not limited to, facilities necessary for successfully converting military bases consistent with an adopted base reuse plan.

(14) ''Public safety facilities'' including, but not limited to, police stations, fire stations, court buildings, jails, juvenile halls, and juvenile detention facilities.

(15) ''State highways'' including any state highway as described in Chapter 2 (commencing with Section 230) of Division 1 of the Streets and Highways Code, and the related components necessary for safe operation of the highway.

(16) (A) Military infrastructure, including, but not limited to, facilities on or near a military installation, that enhance the military operations and mission of one or more military installations in this state. To be eligible for funding, the project shall be endorsed by the Office of Military and Aerospace Support established pursuant to Section 13998.2.

(B) For purposes of this subdivision, ''military installation'' means any facility under the jurisdiction of the Department of Defense, as defined in paragraph (1) of subsection (e) of Section 2687 of Title 10 of the United States Code.

(r) ''Rate reduction bonds'' has the meaning set forth in Section 840 of the Public Utilities Code.

(s) ''Revenues'' means all receipts, purchase payments, loan repayments, lease payments, and all other income or receipts derived by

the bank or a sponsor from the sale, lease, or other financing arrangement undertaken by the bank, a sponsor or a participating party, including, but not limited to, all receipts from a bond purchase agreement, and any income or revenue derived from the investment of any money in any fund or account of the bank or a sponsor and any receipts derived from transition property. Revenues shall not include moneys in the General Fund of the state.

(t) ''Special purpose trust'' means a trust, partnership, limited partnership, association, corporation, nonprofit corporation, or other entity authorized under the laws of the state to serve as an instrumentality of the state to accomplish public purposes and authorized by the bank to acquire, by purchase or otherwise, for retention or sale, the bonds of a sponsor or of the bank made or entered into pursuant to this division and to issue special purpose trust bonds or other obligations secured by these bonds or other sources of public or private revenues. Special purpose trust also means any entity authorized by the bank to acquire transition property or to issue rate reduction bonds, or both, subject to the approvals by the bank and powers of the bank as are provided by the bank in its resolution authorizing the entity to issue rate reduction bonds.

(u) ''Sponsor'' means any subdivision of the state or local government including departments, agencies, commissions, cities, counties, nonprofit corporations formed on behalf of a sponsor, special districts, assessment districts, and joint powers authorities within the state or any combination of these subdivisions that makes an application to the bank for financial assistance in connection with a project in a manner prescribed by the bank. This definition shall not be construed to require that an applicant have an ownership interest in the project. In addition, an electrical corporation shall be deemed to be the sponsor as well as the participating party for any project relating to the financing of transition costs and the acquisition of transition property on the request of the electrical corporation and any person, company, corporation, partnership, firm, or other entity or group engaged in business or operation within the state that applies for financing of any economic development facility, shall be deemed to be the sponsor as well as the participating party for the project relating to the financing of that economic development facility.

(v) ''State'' means the State of California.

(w) ''Transition costs'' has the meaning set forth in Section 840 of the Public Utilities Code.

(x) ''Transition property'' has the meaning set forth in Section 840 of the Public Utilities Code.

SEC. 3. Section 65053.5 of the Government Code is amended to read:

65053.5. (a) As used in this article, the following terms have the following meaning:

(1) ''Military installation'' means a base, camp, post, station, yard, center, homeport facility for any ship, or other facility under the jurisdiction of the United States Department of Defense, as defined in paragraph (1) of subsection (e) of Section 2687 of Title 10 of the United States Code.

(2) ''Affected local government'' means any county or city identified as located wholly or partly within the boundaries of a military installation or as having a sphere of influence over any portion of the installation with responsibility for local zoning and planning decisions.

(b) The Legislature hereby finds and declares all of the following:

(1) Because of the tremendous economic impact that military installations have on the state, it is in the best interest of the state to facilitate their retention.

(2) It is the intent of the Legislature to encourage cooperation among affected local governments in their efforts to retain military installations in this state by authorizing the creation of a joint powers authority pursuant to this section.

(3) The Legislature also encourages affected local governments to engage other community-based organizations in their retention activities.

(c) For the purposes of this article, a local retention authority shall be recognized for each active military installation in this state.

(d) A list of retention authorities or their successors, including, but not limited to, separate airport or port authorities recognized as the local retention authority for the military installations, shall be maintained by the Office of Military and Aerospace Support created pursuant to Section 13998.2. If multiple affected local governments are identified for a military installation as described in paragraph (2) of subdivision (a), those affected counties and cities may, by resolution, designate an existing joint powers authority or establish a joint powers authority for the purposes of this article pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1.

(e) The state shall recognize a local retention authority for each active military installation if resolutions acknowledging the authority as the local retention authority are adopted by all county boards of supervisors and city councils identified as described in paragraph (2) of subdivision (a) and are forwarded to the Office of Military and Aerospace Support on or before October 1, 2004. If prior to January 1, 2004, a local government was awarded grant moneys pursuant to any predecessor to Section 13998.8 for a specific military installation and qualifies as an affected local government as described in paragraph (2) of subdivision (a), the recipient local government shall be recognized by the state as the

local retention authority unless resolutions acknowledging a different authority are adopted by all county boards of supervisors and city councils identified as described in paragraph (2) of subdivision (a), and are forwarded to the Office of Military and Aerospace Support.

(f) If the necessary resolutions are not adopted within the time limit specified in subdivision (e), the Office of Military and Aerospace Support shall recognize a local retention authority for each military installation.

SEC. 4. Section 65053.6 of the Government Code is amended to read:

65053.6. The local retention authority shall be recognized by all state agencies as the local retention planning authority for the military installation. The state shall encourage the federal government and other local jurisdictions to recognize similarly the authorities designated pursuant to Section 65053.5 for the purposes of retention activities.

SEC. 5. Section 65302 of the Government Code is amended to read:

65302. The general plan shall consist of a statement of development policies and shall include a diagram or diagrams and text setting forth objectives, principles, standards, and plan proposals. The plan shall include the following elements:

(a) A land use element that designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, including agriculture, natural resources, recreation, and enjoyment of scenic beauty, education, public buildings and grounds, solid and liquid waste disposal facilities, and other categories of public and private uses of land. The land use element shall include a statement of the standards of population density and building intensity recommended for the various districts and other territory covered by the plan. The land use element shall identify areas covered by the plan which are subject to flooding and shall be reviewed annually with respect to those areas. The land use element shall also do both of the following:

(1) Designate in a land use category that provides for timber production those parcels of real property zoned for timberland production pursuant to the California Timberland Productivity Act of 1982, Chapter 6.7 (commencing with Section 51100) of Part 1 of Division 1 of Title 5.

(2) Consider the impact of new growth on military readiness activities carried out on military bases, installations, and operating and training areas, when proposing zoning ordinances or designating land uses covered by the general plan for land, or other territory adjacent to military facilities, or underlying designated military aviation routes and airspace.

(A) In determining the impact of new growth on military readiness activities, information provided by military facilities shall be considered. Cities and counties shall address military impacts based on information from the military and other sources.

(B) The following definitions govern this paragraph:

(i) ''Military readiness activities'' mean all of the following:

(I) Training, support, and operations that prepare the men and women of the military for combat.

(II) Operation, maintenance, and security of any military installation.

(III) Testing of military equipment, vehicles, weapons, and sensors for proper operation or suitability for combat use.

(ii) ''Military installation'' means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the United States Department of Defense as defined in paragraph (1) of subsection (e) of Section 2687 of Title 10 of the United States Code.

(b) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, any military airports and ports, and other local public utilities and facilities, all correlated with the land use element of the plan.

(c) A housing element as provided in Article 10.6 (commencing with Section 65580).

(d) A conservation element for the conservation, development, and utilization of natural resources including water and its hydraulic force, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals, and other natural resources. The conservation element shall consider the effect of development within the jurisdiction, as described in the land use element, on natural resources located on public lands, including military installations. That portion of the conservation element including waters shall be developed in coordination with any countywide water agency and with all district and city agencies that have developed, served, controlled or conserved water for any purpose for the county or city for which the plan is prepared. Coordination shall include the discussion and evaluation of any water supply and demand information described in Section 65352.5, if that information has been submitted by the water agency to the city or county. The conservation element may also cover the following:

(1) The reclamation of land and waters.

(2) Prevention and control of the pollution of streams and other waters.

(3) Regulation of the use of land in stream channels and other areas required for the accomplishment of the conservation plan.

(4) Prevention, control, and correction of the erosion of soils, beaches, and shores.

(5) Protection of watersheds.

(6) The location, quantity and quality of the rock, sand and gravel resources.

(7) Flood control.

The conservation element shall be prepared and adopted no later than December 31, 1973.

(e) An open-space element as provided in Article 10.5 (commencing with Section 65560).

(f) A noise element which shall identify and appraise noise problems in the community. The noise element shall recognize the guidelines established by the Office of Noise Control in the State Department of Health Services and shall analyze and quantify, to the extent practicable, as determined by the legislative body, current and projected noise levels for all of the following sources:

(1) Highways and freeways.

(2) Primary arterials and major local streets.

(3) Passenger and freight on-line railroad operations and ground rapid transit systems.

(4) Commercial, general aviation, heliport, helistop, and military airport operations, aircraft overflights, jet engine test stands, and all other ground facilities and maintenance functions related to airport operation.

(5) Local industrial plants, including, but not limited to, railroad classification yards.

(6) Other ground stationary noise sources, including, but not limited to, military installations, identified by local agencies as contributing to the community noise environment.

Noise contours shall be shown for all of these sources and stated in terms of community noise equivalent level (CNEL) or day-night average level (L_{dn}). The noise contours shall be prepared on the basis of noise monitoring or following generally accepted noise modeling techniques for the various sources identified in paragraphs (1) to (6), inclusive.

The noise contours shall be used as a guide for establishing a pattern of land uses in the land use element that minimizes the exposure of community residents to excessive noise.

The noise element shall include implementation measures and possible solutions that address existing and foreseeable noise problems, if any. The adopted noise element shall serve as a guideline for compliance with the state's noise insulation standards.

(g) A safety element for the protection of the community from any unreasonable risks associated with the effects of seismically induced surface rupture, ground shaking, ground failure, tsunami, seiche, and dam failure; slope instability leading to mudslides and landslides; subsidence, liquefaction and other seismic hazards identified pursuant

to Chapter 7.8 (commencing with Section 2690) of the Public Resources Code, and other geologic hazards known to the legislative body; flooding; and wild land and urban fires. The safety element shall include mapping of known seismic and other geologic hazards. It shall also address evacuation routes, military installations, peakload water supply requirements, and minimum road widths and clearances around structures, as those items relate to identified fire and geologic hazards. Prior to the periodic review of its general plan and prior to preparing or revising its safety element, each city and county shall consult the Division of Mines and Geology of the Department of Conservation and the Office of Emergency Services for the purpose of including information known by and available to the department and the office required by this subdivision.

To the extent that a county's safety element is sufficiently detailed and contains appropriate policies and programs for adoption by a city, a city may adopt that portion of the county's safety element that pertains to the city's planning area in satisfaction of the requirement imposed by this subdivision.

At least 45 days prior to adoption or amendment of the safety element, each county and city shall submit to the Division of Mines and Geology of the Department of Conservation one copy of a draft of the safety element or amendment and any technical studies used for developing the safety element. The division may review drafts submitted to it to determine whether they incorporate known seismic and other geologic hazard information, and report its findings to the planning agency within 30 days of receipt of the draft of the safety element or amendment pursuant to this subdivision. The legislative body shall consider the division's findings prior to final adoption of the safety element or amendment unless the division's findings are not available within the above prescribed time limits or unless the division has indicated to the city or county that the division will not review the safety element. If the division's findings are not available within those prescribed time limits, the legislative body may take the division's findings into consideration at the time it considers future amendments to the safety element. Each county and city shall provide the division with a copy of its adopted safety element or amendments. The division may review adopted safety elements or amendments and report its findings. All findings made by the division shall be advisory to the planning agency and legislative body.

SEC. 5.1. Section 65302 of the Government Code is amended to read:

65302. The general plan shall consist of a statement of development policies and shall include a diagram or diagrams and text setting forth

objectives, principles, standards, and plan proposals. The plan shall include the following elements:

(a) A land use element that designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, agriculture, natural resources, recreation, and enjoyment of scenic beauty, education, public buildings and grounds, solid and liquid waste disposal facilities, and other categories of public and private uses of land. The land use element shall include a statement of the standards of population density and building intensity recommended for the various districts and other territory covered by the plan. The land use element shall identify areas covered by the plan that are subject to flooding and shall be reviewed annually with respect to those areas. The land use element shall also do both of the following:

(1) Designate in a land use category that provides for timber production those parcels of real property zoned for timberland production pursuant to the California Timberland Productivity Act of 1982, Chapter 6.7 (commencing with Section 51100) of Part 1 of Division 1 of Title 5.

(2) Consider the impact of new growth on military readiness activities carried out on military bases, installations, and operating and training areas, when proposing zoning ordinances or designating land uses covered by the general plan for land, or other territory adjacent to military facilities, or underlying designated military aviation routes and airspace.

(A) In determining the impact of new growth on military readiness activities, information provided by military facilities shall be considered. Cities and counties shall address military impacts based on information from the military and other sources.

(B) The following definitions govern this paragraph:

(i) ''Military readiness activities'' mean all of the following:

(I) Training, support, and operations that prepare the men and women of the military for combat.

(II) Operation, maintenance, and security of any military installation.

(III) Testing of military equipment, vehicles, weapons, and sensors for proper operation or suitability for combat use.

(ii) ''Military installation'' means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the United States Department of Defense as defined in paragraph (1) of subsection (e) of Section 2687 of Title 10 of the United States Code.

(b) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes,

terminals, any military airports and ports, and other local public utilities and facilities, all correlated with the land use element of the plan.

(c) A housing element as provided in Article 10.6 (commencing with Section 65580).

(d) A conservation element for the conservation, development, and utilization of natural resources including water and its hydraulic force, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals, and other natural resources. The conservation element shall consider the effect of development within the jurisdiction, as described in the land use element, on natural resources located on public lands, including military installations. That portion of the conservation element including waters shall be developed in coordination with any countywide water agency and with all district and city agencies that have developed, served, controlled or conserved water for any purpose for the county or city for which the plan is prepared. Coordination shall include the discussion and evaluation of any water supply and demand information described in Section 65352.5, if that information has been submitted by the water agency to the city or county. The conservation element may also cover the following:

(1) The reclamation of land and waters.

(2) Prevention and control of the pollution of streams and other waters.

(3) Regulation of the use of land in stream channels and other areas required for the accomplishment of the conservation plan.

(4) Prevention, control, and correction of the erosion of soils, beaches, and shores.

(5) Protection of watersheds.

(6) The location, quantity and quality of the rock, sand and gravel resources.

(7) Flood control.

(8) Conservation of agricultural lands.

The conservation element shall be prepared and adopted no later than December 31, 1973.

(e) An agricultural and open-space element as provided in Article 10.5 (commencing with Section 65560).

(f) A noise element which shall identify and appraise noise problems in the community. The noise element shall recognize the guidelines established by the Office of Noise Control in the State Department of Health Services and shall analyze and quantify, to the extent practicable, as determined by the legislative body, current and projected noise levels for all of the following sources:

(1) Highways and freeways.

(2) Primary arterials and major local streets.

(3) Passenger and freight on-line railroad operations and ground rapid transit systems.

(4) Commercial, general aviation, heliport, helistop, and military airport operations, aircraft overflights, jet engine test stands, and all other ground facilities and maintenance functions related to airport operation.

(5) Local industrial plants, including, but not limited to, railroad classification yards.

(6) Other ground stationary noise sources, including, but not limited to, military installations, identified by local agencies as contributing to the community noise environment.

Noise contours shall be shown for all of these sources and stated in terms of community noise equivalent level (CNEL) or day-night average level (L_{dn}). The noise contours shall be prepared on the basis of noise monitoring or following generally accepted noise modeling techniques for the various sources identified in paragraphs (1) to (6), inclusive.

The noise contours shall be used as a guide for establishing a pattern of land uses in the land use element that minimizes the exposure of community residents to excessive noise.

The noise element shall include implementation measures and possible solutions that address existing and foreseeable noise problems, if any. The adopted noise element shall serve as a guideline for compliance with the state's noise insulation standards.

(g) A safety element for the protection of the community from any unreasonable risks associated with the effects of seismically induced surface rupture, ground shaking, ground failure, tsunami, seiche, and dam failure; slope instability leading to mudslides and landslides; subsidence, liquefaction and other seismic hazards identified pursuant to Chapter 7.8 (commencing with Section 2690) of the Public Resources Code, and other geologic hazards known to the legislative body; flooding; and wild land and urban fires. The safety element shall include mapping of known seismic and other geologic hazards. It shall also address evacuation routes, military installations, peakload water supply requirements, and minimum road widths and clearances around structures, as those items relate to identified fire and geologic hazards. Prior to the periodic review of its general plan and prior to preparing or revising its safety element, each city and county shall consult the Division of Mines and Geology of the Department of Conservation and the Office of Emergency Services for the purpose of including information known by and available to the department and the office required by this subdivision.

To the extent that a county's safety element is sufficiently detailed and contains appropriate policies and programs for adoption by a city, a city may adopt that portion of the county's safety element that pertains to the

city's planning area in satisfaction of the requirement imposed by this subdivision.

At least 45 days prior to adoption or amendment of the safety element, each county and city shall submit to the Division of Mines and Geology of the Department of Conservation one copy of a draft of the safety element or amendment and any technical studies used for developing the safety element. The division may review drafts submitted to it to determine whether they incorporate known seismic and other geologic hazard information, and report its findings to the planning agency within 30 days of receipt of the draft of the safety element or amendment pursuant to this subdivision. The legislative body shall consider the division's findings prior to final adoption of the safety element or amendment unless the division's findings are not available within the above prescribed time limits or unless the division has indicated to the city or county that the division will not review the safety element. If the division's findings are not available within those prescribed time limits, the legislative body may take the division's findings into consideration at the time it considers future amendments to the safety element. Each county and city shall provide the division with a copy of its adopted safety element or amendments. The division may review adopted safety elements or amendments and report its findings. All findings made by the division shall be advisory to the planning agency and legislative body.

SEC. 5.3. Section 65302 of the Government Code is amended to read:

65302. The general plan shall consist of a statement of development policies and shall include a diagram or diagrams and text setting forth objectives, principles, standards, and plan proposals. The plan shall include the following elements:

(a) A land use element that designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, including agriculture, natural resources, recreation, and enjoyment of scenic beauty, education, public buildings and grounds, solid and liquid waste disposal facilities, and other categories of public and private uses of land. The land use element shall include a statement of the standards of population density and building intensity recommended for the various districts and other territory covered by the plan. The land use element shall identify areas covered by the plan which are subject to flooding and shall be reviewed annually with respect to those areas. The land use element shall also do both of the following:

(1) Designate in a land use category that provides for timber production those parcels of real property zoned for timberland production pursuant to the California Timberland Productivity Act of

1982, Chapter 6.7 (commencing with Section 51100) of Part 1 of Division 1 of Title 5.

(2) Consider the impact of new growth on military readiness activities carried out on military bases, installations, and operating and training areas, when proposing zoning ordinances or designating land uses covered by the general plan for land, or other territory adjacent to military facilities, or underlying designated military aviation routes and airspace.

(A) In determining the impact of new growth on military readiness activities, information provided by military facilities shall be considered. Cities and counties shall address military impacts based on information from the military and other sources.

(B) The following definitions govern this paragraph:

(i) ''Military readiness activities'' mean all of the following:

(I) Training, support, and operations that prepare the men and women of the military for combat.

(II) Operation, maintenance, and security of any military installation.

(III) Testing of military equipment, vehicles, weapons, and sensors for proper operation or suitability for combat use.

(ii) ''Military installation'' means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the United States Department of Defense as defined in paragraph (1) of subsection (e) of Section 2687 of Title 10 of the United States Code.

(b) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, any military airports and ports, and other local public utilities and facilities, all correlated with the land use element of the plan.

(c) A housing element as provided in Article 10.6 (commencing with Section 65580).

(d) A conservation element for the conservation, development, and utilization of natural resources including water and its hydraulic force, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals, and other natural resources. The conservation element shall consider the effect of development within the jurisdiction, as described in the land use element, on natural resources located on public lands, including military installations. That portion of the conservation element including waters shall be developed in coordination with any countywide water agency and with all district and city agencies that have developed, served, controlled or conserved water for any purpose for the county or city for which the plan is prepared. Coordination shall include the discussion and evaluation of any water supply and demand information described in Section 65352.5, if that information has been

submitted by the water agency to the city or county. The conservation element may also cover the following:

(1) The reclamation of land and waters.

(2) Prevention and control of the pollution of streams and other waters.

(3) Regulation of the use of land in stream channels and other areas required for the accomplishment of the conservation plan.

(4) Prevention, control, and correction of the erosion of soils, beaches, and shores.

(5) Protection of watersheds.

(6) The location, quantity and quality of the rock, sand and gravel resources.

(7) Flood control.

The conservation element shall be prepared and adopted no later than December 31, 1973.

(e) An open-space element as provided in Article 10.5 (commencing with Section 65560).

(f) A noise element which shall identify and appraise noise problems in the community. The noise element shall recognize the guidelines established by the Office of Noise Control in the State Department of Health Services and shall analyze and quantify, to the extent practicable, as determined by the legislative body, current and projected noise levels for all of the following sources:

(1) Highways and freeways.

(2) Primary arterials and major local streets.

(3) Passenger and freight on-line railroad operations and ground rapid transit systems.

(4) Commercial, general aviation, heliport, helistop, and military airport operations, aircraft overflights, jet engine test stands, and all other ground facilities and maintenance functions related to airport operation.

(5) Local industrial plants, including, but not limited to, railroad classification yards.

(6) Other ground stationary noise sources, including, but not limited to, military installations, identified by local agencies as contributing to the community noise environment.

Noise contours shall be shown for all of these sources and stated in terms of community noise equivalent level (CNEL) or day-night average level (L_{dn}). The noise contours shall be prepared on the basis of noise monitoring or following generally accepted noise modeling techniques for the various sources identified in paragraphs (1) to (6), inclusive.

The noise contours shall be used as a guide for establishing a pattern of land uses in the land use element that minimizes the exposure of community residents to excessive noise.

The noise element shall include implementation measures and possible solutions that address existing and foreseeable noise problems, if any. The adopted noise element shall serve as a guideline for compliance with the state's noise insulation standards.

(g) A safety element for the protection of the community from any unreasonable risks associated with the effects of seismically induced surface rupture, ground shaking, ground failure, tsunami, seiche, and dam failure; slope instability leading to mudslides and landslides; subsidence, liquefaction and other seismic hazards identified pursuant to Chapter 7.8 (commencing with Section 2690) of the Public Resources Code, and other geologic hazards known to the legislative body; flooding; and wild land and urban fires. The safety element shall include mapping of known seismic and other geologic hazards. It shall also address evacuation routes, military installations, peakload water supply requirements, and minimum road widths and clearances around structures, as those items relate to identified fire and geologic hazards.

(1) Prior to the periodic review of its general plan and prior to preparing or revising its safety element, each city and county shall consult the Division of Mines and Geology of the Department of Conservation and the Office of Emergency Services for the purpose of including information known by and available to the department and the office required by this subdivision.

(2) To the extent that a county's safety element is sufficiently detailed and contains appropriate policies and programs for adoption by a city, a city may adopt that portion of the county's safety element that pertains to the city's planning area in satisfaction of the requirement imposed by this subdivision.

SEC. 5.5. Section 65302 of the Government Code is amended to read:

65302. The general plan shall consist of a statement of development policies and shall include a diagram or diagrams and text setting forth objectives, principles, standards, and plan proposals. The plan shall include the following elements:

(a) A land use element that designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, agriculture, natural resources, recreation, and enjoyment of scenic beauty, education, public buildings and grounds, solid and liquid waste disposal facilities, and other categories of public and private uses of land. The land use element shall include a statement of the standards of population density and building intensity recommended for the various districts and other territory covered by the plan. The land use element shall identify areas covered by the plan that are subject to flooding and shall be reviewed annually

with respect to those areas. The land use element shall also do both of the following:

(1) Designate in a land use category that provides for timber production those parcels of real property zoned for timberland production pursuant to the California Timberland Productivity Act of 1982, Chapter 6.7 (commencing with Section 51100) of Part 1 of Division 1 of Title 5.

(2) Consider the impact of new growth on military readiness activities carried out on military bases, installations, and operating and training areas, when proposing zoning ordinances or designating land uses covered by the general plan for land, or other territory adjacent to military facilities, or underlying designated military aviation routes and airspace.

(A) In determining the impact of new growth on military readiness activities, information provided by military facilities shall be considered. Cities and counties shall address military impacts based on information from the military and other sources.

(B) The following definitions govern this paragraph:

(i) ''Military readiness activities'' mean all of the following:

(I) Training, support, and operations that prepare the men and women of the military for combat.

(II) Operation, maintenance, and security of any military installation.

(III) Testing of military equipment, vehicles, weapons, and sensors for proper operation or suitability for combat use.

(ii) ''Military installation'' means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the United States Department of Defense as defined in paragraph (1) of subsection (e) of Section 2687 of Title 10 of the United States Code.

(b) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, any military airports and ports, and other local public utilities and facilities, all correlated with the land use element of the plan.

(c) A housing element as provided in Article 10.6 (commencing with Section 65580).

(d) A conservation element for the conservation, development, and utilization of natural resources including water and its hydraulic force, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals, and other natural resources. The conservation element shall consider the effect of development within the jurisdiction, as described in the land use element, on natural resources located on public lands, including military installations. That portion of the conservation element including waters shall be developed in coordination with any countywide water agency and with all district and city agencies that have

developed, served, controlled or conserved water for any purpose for the county or city for which the plan is prepared. Coordination shall include the discussion and evaluation of any water supply and demand information described in Section 65352.5, if that information has been submitted by the water agency to the city or county. The conservation element may also cover the following:

(1) The reclamation of land and waters.

(2) Prevention and control of the pollution of streams and other waters.

(3) Regulation of the use of land in stream channels and other areas required for the accomplishment of the conservation plan.

(4) Prevention, control, and correction of the erosion of soils, beaches, and shores.

(5) Protection of watersheds.

(6) The location, quantity and quality of the rock, sand and gravel resources.

(7) Flood control.

(8) Conservation of agricultural lands.

The conservation element shall be prepared and adopted no later than December 31, 1973.

(e) An agricultural and open-space element as provided in Article 10.5 (commencing with Section 65560).

(f) A noise element which shall identify and appraise noise problems in the community. The noise element shall recognize the guidelines established by the Office of Noise Control in the State Department of Health Services and shall analyze and quantify, to the extent practicable, as determined by the legislative body, current and projected noise levels for all of the following sources:

(1) Highways and freeways.

(2) Primary arterials and major local streets.

(3) Passenger and freight on-line railroad operations and ground rapid transit systems.

(4) Commercial, general aviation, heliport, helistop, and military airport operations, aircraft overflights, jet engine test stands, and all other ground facilities and maintenance functions related to airport operation.

(5) Local industrial plants, including, but not limited to, railroad classification yards.

(6) Other ground stationary noise sources, including, but not limited to, military installations, identified by local agencies as contributing to the community noise environment.

Noise contours shall be shown for all of these sources and stated in terms of community noise equivalent level (CNEL) or day-night average level (L_{dn}). The noise contours shall be prepared on the basis of noise

monitoring or following generally accepted noise modeling techniques for the various sources identified in paragraphs (1) to (6), inclusive.

The noise contours shall be used as a guide for establishing a pattern of land uses in the land use element that minimizes the exposure of community residents to excessive noise.

The noise element shall include implementation measures and possible solutions that address existing and foreseeable noise problems, if any. The adopted noise element shall serve as a guideline for compliance with the state's noise insulation standards.

(g) A safety element for the protection of the community from any unreasonable risks associated with the effects of seismically induced surface rupture, ground shaking, ground failure, tsunami, seiche, and dam failure; slope instability leading to mudslides and landslides; subsidence, liquefaction and other seismic hazards identified pursuant to Chapter 7.8 (commencing with Section 2690) of the Public Resources Code, and other geologic hazards known to the legislative body; flooding; and wild land and urban fires. The safety element shall include mapping of known seismic and other geologic hazards. It shall also address evacuation routes, military installations, peakload water supply requirements, and minimum road widths and clearances around structures, as those items relate to identified fire and geologic hazards.

(1) Prior to the periodic review of its general plan and prior to preparing or revising its safety element, each city and county shall consult the Division of Mines and Geology of the Department of Conservation and the Office of Emergency Services for the purpose of including information known by and available to the department and the office required by this subdivision.

(2) To the extent that a county's safety element is sufficiently detailed and contains appropriate policies and programs for adoption by a city, a city may adopt that portion of the county's safety element that pertains to the city's planning area in satisfaction of the requirement imposed by this subdivision.

SEC. 6. Section 65560 of the Government Code is amended to read:

65560. (a) ''Local open-space plan'' is the open-space element of a county or city general plan adopted by the board or council, either as the local open-space plan or as the interim local open-space plan adopted pursuant to Section 65563.

(b) ''Open-space land'' is any parcel or area of land or water that is essentially unimproved and devoted to an open-space use as defined in this section, and that is designated on a local, regional or state open-space plan as any of the following:

(1) Open space for the preservation of natural resources including, but not limited to, areas required for the preservation of plant and animal life, including habitat for fish and wildlife species; areas required for

ecologic and other scientific study purposes; rivers, streams, bays and estuaries; and coastal beaches, lakeshores, banks of rivers and streams, and watershed lands.

(2) Open space used for the managed production of resources, including but not limited to, forest lands, rangeland, agricultural lands and areas of economic importance for the production of food or fiber; areas required for recharge of groundwater basins; bays, estuaries, marshes, rivers and streams which are important for the management of commercial fisheries; and areas containing major mineral deposits, including those in short supply.

(3) Open space for outdoor recreation, including but not limited to, areas of outstanding scenic, historic and cultural value; areas particularly suited for park and recreation purposes, including access to lakeshores, beaches, and rivers and streams; and areas which serve as links between major recreation and open-space reservations, including utility easements, banks of rivers and streams, trails, and scenic highway corridors.

(4) Open space for public health and safety, including, but not limited to, areas which require special management or regulation because of hazardous or special conditions such as earthquake fault zones, unstable soil areas, flood plains, watersheds, areas presenting high fire risks, areas required for the protection of water quality and water reservoirs and areas required for the protection and enhancement of air quality.

(5) Open space in support of the mission of military installations that comprises areas adjacent to military installations, military training routes, and underlying restricted airspace that can provide additional buffer zones to military activities and complement the resource values of the military lands.

SEC. 6.1. Section 65560 of the Government Code is amended to read:

65560. (a) The agricultural and open-space element is the component of a county or city general plan adopted by the legislative body pursuant to Section 65563.

(b) ''Agricultural and open-space land'' is any parcel or area of land or water that is essentially unimproved and devoted to one or more land uses as defined in this section, and that is designated on a local, regional or state open-space plan as any of the following:

(1) Land used for the preservation of natural resources including, but not limited to, areas required for the preservation of plant and animal life, including habitat for fish and wildlife species; areas required for ecologic and other scientific study purposes; rivers, streams, bays and estuaries; and coastal beaches, lakeshores, banks of rivers and streams, and watershed lands.

(2) Land used for the production of food or fiber, including, but not limited to, prime farmland, farmland of statewide importance, unique farmland, farmland of local importance, and grazing land, excluding land committed to nonagricultural uses.

(3) Land used for the managed production of resources, including but not limited to, forest lands ; areas required for recharge of groundwater basins; bays, estuaries, marshes, rivers and streams which are important for the management of commercial fisheries; and areas containing major mineral deposits, including those in short supply.

(4) Land for outdoor recreation, including, but not limited to, areas of outstanding scenic, historic and cultural value; areas particularly suited for park and recreation purposes, including access to lakeshores, beaches, and rivers and streams; and areas which serve as links between major recreation and open-space reservations, including utility easements, banks of rivers and streams, trails, and scenic highway corridors.

(5) Land for public health and safety, including, but not limited to, areas which require special management or regulation because of hazardous or special conditions such as earthquake fault zones, unstable soil areas, flood plains, watersheds, areas presenting high fire risks, areas required for the protection of water quality and water reservoirs and areas required for the protection and enhancement of air quality.

(6) Land for the protection of places, features, and objects described in Sections 5097.9 and 5097.995 of the Public Resources Code.

(7) Land in support of the mission of military installations that comprises areas adjacent to military installations, military training routes, and underlying restricted airspace that can provide additional buffer zones to military activities and complement the resource values of the military lands.

SEC. 6.3. Section 65560 of the Government Code is amended to read:

65560. (a) ''Local open-space plan'' is the open-space element of a county or city general plan adopted by the board or council, either as the local open-space plan or as the interim local open-space plan adopted pursuant to Section 65563.

(b) ''Open-space land'' is any parcel or area of land or water that is essentially unimproved and devoted to an open-space use as defined in this section, and that is designated on a local, regional or state open-space plan as any of the following:

(1) Open space for the preservation of natural resources including, but not limited to, areas required for the preservation of plant and animal life, including habitat for fish and wildlife species; areas required for ecologic and other scientific study purposes; rivers, streams, bays and

estuaries; and coastal beaches, lakeshores, banks of rivers and streams, and watershed lands.

(2) Open space used for the managed production of resources, including but not limited to, forest lands, rangeland, agricultural lands and areas of economic importance for the production of food or fiber; areas required for recharge of groundwater basins; bays, estuaries, marshes, rivers and streams which are important for the management of commercial fisheries; and areas containing major mineral deposits, including those in short supply.

(3) Open space for outdoor recreation, including but not limited to, areas of outstanding scenic, historic and cultural value; areas particularly suited for park and recreation purposes, including access to lakeshores, beaches, and rivers and streams; and areas which serve as links between major recreation and open-space reservations, including utility easements, banks of rivers and streams, trails, and scenic highway corridors.

(4) Open space for public health and safety, including, but not limited to, areas which require special management or regulation because of hazardous or special conditions such as earthquake fault zones, unstable soil areas, flood plains, watersheds, areas presenting high fire risks, areas required for the protection of water quality and water reservoirs and areas required for the protection and enhancement of air quality.

(5) Open space in support of the mission of military installations that comprises areas adjacent to military installations, military training routes, and underlying restricted airspace that can provide additional buffer zones to military activities and complement the resource values of the military lands.

(6) Open space for the protection of places, features, and objects described in Sections 5097.9 and 5097.995 of the Public Resources Code.

SEC. 6.5. Section 65560 of the Government Code is amended to read:

65560. (a) The agricultural and open-space element is the component of a county or city general plan adopted by the legislative body pursuant to Section 65563.

(b) Agricultural and open-space land'' is any parcel or area of land or water that is essentially unimproved and devoted to one or more land uses as defined in this section, and that is designated on a local, regional or state open-space plan as any of the following:

(1) Land used for the preservation of natural resources including, but not limited to, areas required for the preservation of plant and animal life, including habitat for fish and wildlife species; areas required for ecologic and other scientific study purposes; rivers, streams, bays and

estuaries; and coastal beaches, lakeshores, banks of rivers and streams, and watershed lands.

(2) Land used for the production of food or fiber, including, but not limited to, prime farmland, farmland of statewide importance, unique farmland, farmland of local importance, and grazing land, excluding land committed to nonagricultural uses.

(3) Land used for the managed production of resources, including but not limited to, forest lands ; areas required for recharge of groundwater basins; bays, estuaries, marshes, rivers and streams which are important for the management of commercial fisheries; and areas containing major mineral deposits, including those in short supply.

(4) Land for outdoor recreation, including but not limited to, areas of outstanding scenic, historic and cultural value; areas particularly suited for park and recreation purposes, including access to lakeshores, beaches, and rivers and streams; and areas which serve as links between major recreation and open-space reservations, including utility easements, banks of rivers and streams, trails, and scenic highway corridors.

(5) Land for public health and safety, including, but not limited to, areas which require special management or regulation because of hazardous or special conditions such as earthquake fault zones, unstable soil areas, flood plains, watersheds, areas presenting high fire risks, areas required for the protection of water quality and water reservoirs and areas required for the protection and enhancement of air quality.

(6) Land for the protection of places, features, and objects described in Sections 5097.9 and 5097.995 of the Public Resources Code.

(7) Land in support of the mission of military installations that comprises areas adjacent to military installations, military training routes, and underlying restricted airspace that can provide additional buffer zones to military activities and complement the resource values of the military lands.

SEC. 7. Part 14 (commencing with Section 37980) of Division 24 of the Health and Safety Code is repealed.

SEC. 8. Section 8 of Chapter 971 of the Statutes of 2002 is amended to read:

Sec. 8. A city or county shall not be required to comply with the amendments made by this act to Sections 65302, 65302.3, 65560, and 65583 of the Government Code, relating to military readiness activities, military personnel, military airports, and military installations, until the city or county undertakes its next general plan revision.

SEC. 9. This act shall become operative only if Assembly Bill 2565 of the 2003–04 Regular Session is enacted and becomes effective on or before January 1, 2005.

SEC. 10. (a) Section 5.1 of this bill incorporates amendments to Section 65302 of the Government Code proposed by both this bill and AB 2055. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2005, but this bill becomes operative first, (2) each bill amends Section 65302 of the Government Code, and (3) this bill is enacted after AB 2055, in which case Section 65302 of the Government Code, as amended by Section 5 of this bill, shall remain operative only until the operative date of AB 2055, at which time Section 5.1 of this bill shall become operative.

(b) Section 5.3 of this bill incorporates amendments to Section 65302 of the Government Code proposed by both this bill and AB 3065. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2005, but this bill becomes operative first, (2) each bill amends Section 65302 of the Government Code, and (3) this bill is enacted after AB 3065, in which case Section 65302 of the Government Code, as amended by Section 5 of this bill, shall remain operative only until the operative date of AB 3065, at which time Section 5.3 of this bill shall become operative.

(c) Section 5.5 of this bill incorporates amendments to Section 65302 of the Government Code proposed by this bill, AB 2055, and AB 3065. It shall only become operative if (1) all those bills are enacted and become effective on or before January 1, 2005, but this bill becomes operative first, (2) each bill amends Section 65302 of the Government Code, and (3) this bill is enacted after AB 2055 and AB 3065, in which case Section 65302 of the Government Code, as amended by Section 5 of this bill, shall remain operative only until the operative date of AB 2055 and AB 3065, at which time Section 5.5 of this bill shall become operative.

SEC. 11. (a) Section 6.1 of this bill incorporates amendments to Section 65560 of the Government Code proposed by both this bill and AB 2055. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2005, but this bill becomes operative first, (2) each bill amends Section 65560 the Government Code, and (3) this bill is enacted after AB 2055, in which case Section 65560 of the Government Code, as amended by Section 6 of this bill, shall remain operative only until the operative date of AB 2055, at which time Section 6.1 of this bill shall become operative.

(b) Section 6.3 of this bill incorporates amendments to Section 65560 of the Government Code proposed by both this bill and SB 18. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2005, but this bill becomes operative first, (2) each bill amends Section 65560 of the Government Code, and (3) this bill is enacted after SB 18, in which case Section 65560 of the Government Code, as amended by Section 6 of this bill, shall remain

operative only until the operative date of SB 18, at which time Section 6.3 of this bill shall become operative.

(c) Section 6.5 of this bill incorporates amendments to Section 65560 of the Government Code proposed by this bill, AB 2055, and SB 18. It shall only become operative if (1) all those bills are enacted and become effective on or before January 1, 2005, but this bill becomes operative first, (2) each bill amends Section 65560 of the Government Code, and (3) this bill is enacted after AB 2055 and SB 18, in which case Section 65560 of the Government Code, as amended by Section 6 of this bill, shall remain operative only until the operative date of AB 2055 and SB 18, at which time Section 6.5 of this bill shall become operative.

SEC. 12. 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 enable the Office of Military and Aerospace Support to accept private funds at the earliest possible date, and to provide continuity in the technical assistance and training for small cities to accomplish community and economic revitalization and development, it is necessary that this act take effect immediately.

CHAPTER 908

An act to amend Sections 5001.5, 5001.8, 5003.15, 5010, 5090.02, 5090.09, 5090.15, 5090.24, 5090.35, and 5090.53 of, and to amend the heading of Article 4 (commencing with Section 5090.40) of Chapter 1.25 of Division 3 of, to amend and renumber Section 5090.46 of, the Public Resources Code, to amend Section 8352.8 of the Revenue and Taxation Code, and to amend Sections 14601, 14601.1, 14601.2, 14601.3, 14601.4, 14601.5, 38020, 38370, and 40610 of, to amend and repeal Section 38241 of, to amend, repeal, and add Section 38240 of, and to add Sections 38346 and 38375 to, the Vehicle Code, relating to vehicles.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 2004.]

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

SECTION 1. Section 5001.5 of the Public Resources Code is amended to read:

5001.5. Whenever any reference is made to the state park system with respect to a duty, power, purpose, responsibility, or jurisdiction that

can be exercised or carried out within the state vehicular recreation areas, it shall be deemed to be also a reference to, and to mean, the state vehicular recreation areas.

SEC. 2. Section 5001.8 of the Public Resources Code is amended to read:

5001.8. (a) The use of motor vehicles in units of the state park system is subject to the following limitations:

(1) In state wildernesses, natural preserves, and cultural preserves, use is prohibited.

(2) In state parks, state reserves, state beaches, wayside campgrounds, and historical units, use is confined to paved areas and other areas specifically designated and maintained for normal ingress, egress, and parking.

(3) In state recreation areas, use is confined to specifically designated and maintained roads and trails.

(b) The use of motor vehicles on lands in the state vehicular recreation areas is confined to areas and routes designated for that purpose.

SEC. 3. Section 5003.15 of the Public Resources Code is amended to read:

5003.15. The net proceeds of any sale made on behalf of the department pursuant to Section 11011 of the Government Code of any real property originally acquired for state park purposes, regardless of whether that real property is under the jurisdiction of the department, shall be deposited in the fund which was the original source for the acquisition of the property and shall be available for appropriation for the further extension, improvement, or development of the state park system in accordance with the law governing that fund. If the fund of origin is not in existence, or if the original source for the acquisition was funds from the federal government for park purposes or a donation of real property, the net proceeds shall be deposited in the State Parks and Recreation Fund and shall be available for appropriation for the further extension, improvement, or development of the state park system. If the real property was originally acquired with moneys appropriated from the General Fund, the net proceeds shall be deposited in the unappropriated surplus of the General Fund.

This section does not apply to the sale of any real property in the state vehicular recreation areas.

SEC. 4. Section 5010 of the Public Resources Code is amended to read:

5010. (a) The department may collect fees, rents, and other returns for the use of any state park system area, the amounts to be determined by the department. The department may accept a credit card as a method of payment for fees collected through the department's reservation system. Any contract executed by the department with credit card issuers

or draft purchasers shall be consistent with Section 6159 of the Government Code. Notwithstanding Title 1.3 (commencing with Section 1747) of Part 4 of Division 3 of the Civil Code, the department may impose a surcharge in an amount to cover the cost of providing the reservation service, including reimbursement for any fee or discount charged by the credit card issuer.

(b) All revenues received by the department during each fiscal year shall be paid into the State Treasury to the credit of the State Parks and Recreation Fund, which is hereby created.

(c) Notwithstanding subdivision (b), all revenues received by the department from the state vehicular recreation areas shall be paid into the State Treasury to the credit of the Off-Highway Vehicle Trust Fund, as required by Section 38225 of the Vehicle Code.

(d) All revenues received by the department for the entry or launching of boats shall be paid into the State Treasury to the credit of the State Parks and Recreation Fund and shall be used for boating safety, enforcement, operation, and maintenance programs of the department.

(e) On July 1, 1980, all existing balances, including unappropriated balances and encumbered and unencumbered balances, of the following funds and accounts shall be transferred to the State Parks and Recreation Fund:

(1) Park and Recreation Revolving Account (Section 5098, Public Resources Code, as added by Chapter 1222, Statutes of 1972).

(2) The Resources Protection Account (Section 8600, Public Resources Code, as added by Chapter 1052, Statutes of 1969).

(3) Collier Park Preservation Fund (Section 5010, Public Resources Code, as added by Chapter 1502, Statutes of 1974).

(4) San Francisco Maritime State Historic Park Account (Section 2, Chapter 1764, Statutes of 1971).

(5) State Park Highway Account, Bagley Conservation Fund (Section 2107.7, Streets and Highways Code, as added by Chapter 1032, Statutes of 1973).

(6) All funds received by the department pursuant to Division 21 (commencing with Section 31000).

(7) Hostel Facilities Use Fees Account (Section 2, Chapter 265, Statutes of 1974).

(8) All funds, other than expended funds, previously appropriated to the department from the Bagley Conservation Fund.

(f) On and after July 1, 1980, all funds, other than those specified in subdivisions (g) and (h), in the State Parks and Recreation Fund shall be available for expenditure for state park planning, acquisition, and development projects, operation of the state park system, and resource and property management and protection, when appropriated by the Legislature.

(g) All funds in the State Parks and Recreation Fund which had previously been appropriated and have become encumbered, may be used, without further appropriation, for liquidation of those encumbrances, upon the same terms and conditions as made by those previous appropriations.

(h) The balance of any unencumbered funds in the State Park Highway Account in the Bagley Conservation Fund shall be transferred to the State Parks and Recreation Fund and shall be available for expenditure as provided in subdivisions (b) and (c) of Section 2107.7 of the Streets and Highways Code.

(i) All funds received by the Department of Parks and Recreation from the auction sales conducted pursuant to Section 2080.6 of the Civil Code shall be paid into the State Treasury to the credit of the State Parks and Recreation Fund and shall be used for training department employees in the Ranger/Lifeguard classification, including, but not limited to, resource management and protection, law enforcement, interpretation, first aid, cardiopulmonary resuscitation, and medical technical training.

SEC. 5. Section 5090.02 of the Public Resources Code is amended to read:

5090.02. (a) The Legislature finds that off-highway motor vehicles are enjoying an ever-increasing popularity in California and that the indiscriminate and uncontrolled use of those vehicles may have a deleterious impact on the environment, wildlife habitats, native wildlife, and native flora.

(b) The Legislature hereby declares that effectively managed areas and adequate facilities for the use of off-highway vehicles and conservation and enforcement are essential for ecologically balanced recreation.

(c) Accordingly, it is the intent of the Legislature that:

(1) Existing off-highway motor vehicle recreational areas, facilities, and opportunities be expanded and be managed in a manner consistent with this chapter, in particular to maintain sustained long-term use.

(2) New off-highway motor vehicle recreational areas, facilities, and opportunities be provided and managed pursuant to this chapter in a manner that will sustain long-term use.

(3) When areas or trails or portions thereof cannot be maintained to appropriate established standards for sustained long-term use, they shall be closed to use and repaired, to prevent accelerated erosion. Those areas shall remain closed until they can be managed within the soil loss standard or shall be closed and restored.

(4) Prompt and effective implementation of the Off-Highway Motor Vehicle Recreation Program by the Division of Off-Highway Motor

Vehicle Recreation shall have an equal priority among other programs in the department.

(5) Off-highway motor vehicle recreation be managed in accordance with this chapter through financial assistance to local government and joint undertakings with agencies of the United States.

SEC. 6. Section 5090.09 of the Public Resources Code is amended to read:

5090.09. ''System'' means the state vehicular recreation areas, the California Statewide Motorized trail, designated areas within state park units, and areas supported by the grant program.

SEC. 7. Section 5090.15 of the Public Resources Code is amended to read:

5090.15. (a) There is in the department the Off-Highway Motor Vehicle Recreation Commission, consisting of seven members, three of whom shall be appointed by the Governor, two of whom shall be appointed by the Senate Committee on Rules, and two of whom shall be appointed by the Speaker of the Assembly.

(b) In order to be appointed to the commission, a nominee shall represent one or more of the following groups:

(1) Off-highway vehicle recreation interests.

(2) Biological or soil scientists.

(3) Groups or associations of predominantly rural landowners.

(4) Law enforcement.

(5) Environmental protection organizations.

(6) Nonmotorized recreationist interests.

It is the intent of the Legislature that appointees to the commission represent all of the groups delineated in paragraphs (1) to (6), inclusive, to the extent possible.

(c) Whenever any reference is made to the State Park and Recreation Commission pertaining to a duty, power, purpose, responsibility, or jurisdiction of the State Park and Recreation Commission with respect to the state vehicular recreation areas, as established by this chapter, it shall be deemed to be a reference to, and to mean, the Off-Highway Motor Vehicle Recreation Commission.

(d) Based on the findings in the 2004 Off-Highway Vehicle Fuel Tax Study, the division shall, not later than January 1, 2005, prepare and submit to the Legislature a report that identifies the principal reasons why people are using off-road trails and facilities, and an estimate of the proportional amount of off-highway motor vehicle use by jurisdiction, as a means of assisting in the determination of how fuel tax and in lieu of property tax funds should be expended.

SEC. 8. Section 5090.24 of the Public Resources Code is amended to read:

5090.24. The commission has the following particular duties and responsibilities:

(a) Be fully informed regarding all governmental activities affecting the program.

(b) Meet at least four times per year at various locations throughout the state to receive comments on the implementation of the program. Establish an annual calendar of proposed meetings at the beginning of each calendar year.

(c) Consider, upon the request of any owner or tenant, whose property is in the vicinity of any land in the system, any alleged adverse impacts occurring on that person's property from the operation of off-highway motor vehicles and recommend to the division suitable measures for the prevention of any adverse impact determined by the commission to be occurring, and suitable measures for the restoration of adversely impacted property.

(d) Review and comment annually to the director on the proposed budget of expenditures from the fund.

(e) Review and approve all minor and major capital outlay expenditures proposed for the system.

(f) Conduct one public meeting annually, prior to the start of each grant program cycle, to collect public input concerning the program, recommendations for program improvements, and specific project needs for the system.

(g) Prepare and submit a program report to the Governor, the Assembly Water, Parks, and Wildlife Committee, the Senate Committee on Natural Resources and Wildlife, and the Committee on Appropriations of each house on or before July 1, 2005, and every two years thereafter. The report shall address the status of the program and off-highway motor vehicle recreation, the results of the strategic planning process completed pursuant to subdivision (n) of Section 5090.32, the condition of natural and cultural resources of areas and trails receiving state off-highway motor vehicle funds, the resolution of conflicts of use in those areas and trails, the status of, and the accomplishments of expenditures from, the Conservation and Enforcement Services Account, a summary of resource monitoring data compiled and restoration work concluded, and other relevant program-related environmental issues that have arisen over the preceding two calendar years.

The program report shall be adopted by the commission after discussing its contents during two or more public hearings.

(h) The commission shall hold a public hearing in an area in close proximity to any proposed substantial acquisition or development project unless a hearing consistent with federal law or regulation is held in close proximity to the proposed project.

SEC. 9. Section 5090.35 of the Public Resources Code is amended to read:

5090.35. (a) The protection of public safety, the appropriate utilization of lands, and the conservation of land resources are of the highest priority in the management of the state vehicular recreation areas; and, accordingly, the division shall promptly repair and continuously maintain areas and trails, anticipate and prevent accelerated and unnatural erosion, and restore lands damaged by erosion to the extent possible.

(b) The division, in consultation with the United States Natural Resource Conservation Service, the United States Geological Survey, the United States Forest Service, the United States Bureau of Land Management, and the California Department of Conservation shall update the 1991 Soil Conservation Guidelines and Standards to establish a generic and measurable soil conservation standard by March 1, 2006, at least sufficient to allow restoration of off-highway motor vehicle areas and trails. The 1991 Soil Conservation Guidelines and Standards shall remain in effect until they are updated pursuant to this subdivision.

(c) The division shall monitor the condition of soils and wildlife habitat in each state vehicular recreation area each year in order to determine whether the soil conservation standards and habitat protection programs are being met.

(d) Upon a determination that the soil conservation standards and habitat protection plans are not being met in any portion of any state vehicular recreation area the division shall temporarily close the noncompliant portion to repair and prevent accelerated erosion, until the soil conservation standards are met.

(e) Upon a determination that the soil conservation standards cannot be met in any portion of any state vehicular recreation area the division shall close and restore the noncompliant portion pursuant to Section 5090.11.

(f) The division shall not fund trail construction unless the trail is capable of complying with the conservation specifications prescribed in subdivisions (b) and (g). The division shall not fund trail construction where conservation is not feasible.

(g) The division shall make an inventory of wildlife populations and their habitats in each state vehicular recreation area and shall prepare a wildlife habitat protection program to sustain a viable species composition specific to each state vehicular recreation area by July 1, 1989.

(h) If the division determines that the habitat protection program is not being met in any portion of any state vehicular recreation area, the division shall close the noncompliant portion temporarily until the habitat protection program is met.

(i) If the division determines that the habitat protection program cannot be met in any portion of any state vehicular recreation area, the division shall close and restore that noncompliant portion pursuant to Section 5090.11.

(j) The division shall monitor and protect cultural and archaeological resources within the state vehicular recreation areas.

SEC. 10. Section 5090.46 of the Public Resources Code is amended and renumbered to read:

5090.38. No owner or other person having legal control of property in the vicinity of any lands in the system is liable for any actions of any type resulting from, or caused by, the user of an off-highway motor vehicle who is trespassing on property outside the system; and no owner or other person having legal control of property in the vicinity of any lands in the system is liable for any one's actions of any type commenced on, or taking place within, the boundaries of lands in the system.

SEC. 11. The heading of Article 4 (commencing with Section 5090.41) of Chapter 1.25 of Division 3 of the Public Resources Code is amended to read:

Article 4. State Vehicular Recreation Areas

SEC. 12. Section 5090.53 of the Public Resources Code is amended to read:

5090.53. (a) Money in the fund may be granted or expended pursuant to Section 5090.50 for projects to fulfill the conditions outlined below and for public health and safety facilities.

(b) However, no funds may be granted or expended pursuant to Section 5090.50 for the acquisition of land for, or the development of, a trail, trailhead, area, or other facility for the use of off-highway motor vehicles after July 1, 1989, unless all of the following conditions are met:

(1) The recipient has completed wildlife habitat and soil surveys and has prepared a wildlife habitat protection program to sustain a viable species composition for the project area.

(2) The recipient agrees to monitor the condition of soils and wildlife in the project area each year in order to determine whether the soil conservation standards and the wildlife habitat protection programs adopted pursuant to Section 5090.35 are being met.

(3) The recipient agrees that, whenever the soil conservation standards adopted pursuant to Section 5090.35 are not being met in any portion of a project area, the recipient shall close temporarily that noncompliant portion, to repair and prevent accelerated erosion, until the same soil conservation standards adopted pursuant to Section 5090.35 are met.

(4) The recipient agrees that, whenever the wildlife habitat protection programs adopted pursuant to Section 5090.35 are not being met in any portion of a project area, the recipient shall close temporarily that noncompliant portion until the same wildlife habitat protection programs adopted pursuant to Section 5090.35 are met.

(5) The recipient agrees to enforce the registration of off-highway motor vehicles and the other provisions of Division 16.5 (commencing with Section 38000) of the Vehicle Code and to enforce the other applicable laws regarding the operation of off-highway motor vehicles.

SEC. 13. Section 8352.8 of the Revenue and Taxation Code is amended to read:

8352.8. (a) The Conservation and Enforcement Services Account is hereby established as an account in the Off-Highway Vehicle Trust Fund. Subject to Sections 8352 and 8352.1, on the first day of every month there shall be transferred from money deposited in the Motor Vehicle Fuel Account to the Conservation and Enforcement Services Account the total amount determined on the basis of the estimates contained in this section.

(b) On or before August 15, 1987, and every two years thereafter, the Department of Transportation shall prepare, or cause to be prepared, in cooperation with the Department of Parks and Recreation, a report setting forth the current estimate of the amount of money credited to the Motor Vehicle Fuel Account that is attributable to taxes imposed upon distributions of motor vehicle fuel estimated to have been used in the off-highway operation of vehicles required to be registered as off-highway vehicles by Division 16.5 (commencing with Section 38000) of the Vehicle Code, but which were not so registered, and shall submit a copy of the report to the Legislature.

(c) Funds in the Conservation and Enforcement Services Account shall be allocated to the Division of Off-Highway Motor Vehicle Recreation of the Department of Parks and Recreation for expenditure when appropriated by the Legislature for the purposes of Section 5090.64 of the Public Resources Code.

(d) On or before January 1, 2005, the Division of Off-Highway Motor Vehicle Recreation in the Department of Parks and Recreation shall submit a report to the Legislature that identifies the appropriate level of funding necessary to sustain conservation and enforcement needs, grant areas, state vehicular recreation areas, capital outlay, and division support, based upon an analysis of program income and expenditures during the preceding five fiscal years and the findings contained in the most recent fuel tax study.

SEC. 14. Section 14601 of the Vehicle Code is amended to read:

14601. (a) No person shall drive a motor vehicle at any time when that person's driving privilege is suspended or revoked for reckless

driving in violation of Section 23103 or 23104, any reason listed in subdivision (a) or (c) of Section 12806 authorizing the department to refuse to issue a license, negligent or incompetent operation of a motor vehicle as prescribed in subdivision (e) of Section 12809, or negligent operation as prescribed in Section 12810.5, if the person so driving has knowledge of the suspension or revocation. Knowledge shall be conclusively presumed if mailed notice has been given by the department to the person pursuant to Section 13106. The presumption established by this subdivision is a presumption affecting the burden of proof.

(b) Any person convicted under this section shall be punished as follows:

(1) Upon a first conviction, by imprisonment in a county jail for not less than five days or more than six months and by a fine of not less than three hundred dollars ($300) or more than one thousand dollars ($1,000).

(2) If the offense occurred within five years of a prior offense which resulted in a conviction of a violation of this section or Section 14601.1, 14601.2, or 14601.5, by imprisonment in a county jail for not less than 10 days or more than one year and by a fine of not less than five hundred dollars ($500) or more than two thousand dollars ($2,000).

(c) If the offense occurred within five years of a prior offense which resulted in a conviction of a violation of this section or Section 14601.1, 14601.2, or 14601.5, and is granted probation, the court shall impose as a condition of probation that the person be confined in a county jail for at least 10 days.

(d) Nothing in this section prohibits a person from driving a motor vehicle, which is owned or utilized by the person's employer, during the course of employment on private property which is owned or utilized by the employer, except an offstreet parking facility as defined in subdivision (d) of Section 12500.

(e) When the prosecution agrees to a plea of guilty or nolo contendere to a charge of a violation of this section in satisfaction of, or as a substitute for, an original charge of a violation of Section 14601.2, and the court accepts that plea, except, in the interest of justice, when the court finds it would be inappropriate, the court shall, pursuant to Section 23575, require the person convicted, in addition to any other requirements, to install a certified ignition interlock device on any vehicle that the person owns or operates for a period not to exceed three years.

(f) This section also applies to the operation of an off-highway motor vehicle on those lands to which the Chappie-Z'berg Off-Highway Motor Vehicle Law of 1971 (Division 16.5 (commencing with Section 38000)) applies as to off-highway motor vehicles, as described in Section 38001.

SEC. 15. Section 14601.1 of the Vehicle Code is amended to read:

14601.1. (a) No person shall drive a motor vehicle when his or her driving privilege is suspended or revoked for any reason other than those listed in Section 14601, 14601.2, or 14601.5, if the person so driving has knowledge of the suspension or revocation. Knowledge shall be conclusively presumed if mailed notice has been given by the department to the person pursuant to Section 13106. The presumption established by this subdivision is a presumption affecting the burden of proof.

(b) Any person convicted under this section shall be punished as follows:

(1) Upon a first conviction, by imprisonment in the county jail for not more than six months or by a fine of not less than three hundred dollars ($300) or more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(2) If the offense occurred within five years of a prior offense which resulted in a conviction of a violation of this section or Section 14601, 14601.2, or 14601.5, by imprisonment in the county jail for not less than five days or more than one year and by a fine of not less than five hundred dollars ($500) or more than two thousand dollars ($2,000).

(c) Nothing in this section prohibits a person from driving a motor vehicle, which is owned or utilized by the person's employer, during the course of employment on private property which is owned or utilized by the employer, except an offstreet parking facility as defined in subdivision (d) of Section 12500.

(d) When the prosecution agrees to a plea of guilty or nolo contendere to a charge of a violation of this section in satisfaction of, or as a substitute for, an original charge of a violation of Section 14601.2, and the court accepts that plea, except, in the interest of justice, when the court finds it would be inappropriate, the court shall, pursuant to Section 23575, require the person convicted, in addition to any other requirements, to install a certified ignition interlock device on any vehicle that the person owns or operates for a period not to exceed three years.

(e) This section also applies to the operation of an off-highway motor vehicle on those lands to which the Chappie-Z'berg Off-Highway Motor Vehicle Law of 1971 (Division 16.5 (commencing with Section 38000)) applies as to off-highway motor vehicles, as described in Section 38001.

SEC. 16. Section 14601.2 of the Vehicle Code is amended to read:

14601.2. (a) No person shall drive a motor vehicle at any time when that person's driving privilege is suspended or revoked for a conviction of a violation of Section 23152 or 23153 if the person so driving has knowledge of the suspension or revocation.

(b) Except in full compliance with the restriction, no person shall drive a motor vehicle at any time when that person's driving privilege is restricted, if the person so driving has knowledge of the restriction.

(c) Knowledge of suspension or revocation of the driving privilege shall be conclusively presumed if mailed notice has been given by the department to the person pursuant to Section 13106. Knowledge of restriction of the driving privilege shall be presumed if notice has been given by the court to the person. The presumption established by this subdivision is a presumption affecting the burden of proof.

(d) Any person convicted of a violation of this section shall be punished as follows:

(1) Upon a first conviction, by imprisonment in the county jail for not less than 10 days or more than six months and by a fine of not less than three hundred dollars ($300) or more than one thousand dollars ($1,000), unless the person has been designated an habitual traffic offender under subdivision (b) of Section 23546, subdivision (b) of Section 23550, or subdivision (b) of Section 23550.5, in which case the person, in addition, shall be sentenced as provided in paragraph (3) of subdivision (e) of Section 14601.3.

(2) If the offense occurred within five years of a prior offense that resulted in a conviction of a violation of this section or Section 14601, 14601.1, or 14601.5, by imprisonment in the county jail for not less than 30 days or more than one year and by a fine of not less than five hundred dollars ($500) or more than two thousand dollars ($2,000), unless the person has been designated an habitual traffic offender under subdivision (b) of Section 23546 or subdivision (b) of Section 23550, in which case the person, in addition, shall be sentenced as provided in paragraph (3) of subdivision (e) of Section 14601.3.

(e) If any person is convicted of a first offense under this section and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for at least 10 days.

(f) If the offense occurred within five years of a prior offense that resulted in a conviction of a violation of this section or Section 14601, 14601.1, or 14601.5 and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for at least 30 days.

(g) If any person is convicted of a second or subsequent offense that results in a conviction of this section within seven years, but over five years, of a prior offense that resulted in a conviction of a violation of this section or Section 14601, 14601.1, or 14601.5 and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for at least 10 days.

(h) Pursuant to Section 23575, the court shall require any person convicted of a violation of this section to install a certified ignition interlock device on any vehicle the person owns or operates.

(i) Nothing in this section prohibits a person who is participating in, or has completed, an alcohol or drug rehabilitation program from driving a motor vehicle that is owned or utilized by the person's employer, during the course of employment on private property that is owned or utilized by the employer, except an offstreet parking facility as defined in subdivision (c) of Section 12500.

(j) This section also applies to the operation of an off-highway motor vehicle on those lands to which the Chappie-Z'berg Off-Highway Motor Vehicle Law of 1971 (Division 16.5 (commencing with Section 38000)) applies as to off-highway motor vehicles, as described in Section 38001.

SEC. 16.3. Section 14601.2 of the Vehicle Code is amended to read:

14601.2. (a) No person shall drive a motor vehicle at any time when that person's driving privilege is suspended or revoked for a conviction of a violation of Section 23152 or 23153 if the person so driving has knowledge of the suspension or revocation.

(b) Except in full compliance with the restriction, no person shall drive a motor vehicle at any time when that person's driving privilege is restricted, if the person so driving has knowledge of the restriction.

(c) Knowledge of suspension or revocation of the driving privilege shall be conclusively presumed if mailed notice has been given by the department to the person pursuant to Section 13106. Knowledge of restriction of the driving privilege shall be presumed if notice has been given by the court to the person. The presumption established by this subdivision is a presumption affecting the burden of proof.

(d) Any person convicted of a violation of this section shall be punished as follows:

(1) Upon a first conviction, by imprisonment in the county jail for not less than 10 days or more than six months and by a fine of not less than three hundred dollars ($300) or more than one thousand dollars ($1,000), unless the person has been designated an habitual traffic offender under subdivision (b) of Section 23546, subdivision (b) of Section 23550, or subdivision (b) of Section 23550.5, in which case the person, in addition, shall be sentenced as provided in paragraph (3) of subdivision (e) of Section 14601.3.

(2) If the offense occurred within five years of a prior offense that resulted in a conviction of a violation of this section or Section 14601, 14601.1, or 14601.5, by imprisonment in the county jail for not less than 30 days or more than one year and by a fine of not less than five hundred dollars ($500) or more than two thousand dollars ($2,000), unless the person has been designated an habitual traffic offender under subdivision (b) of Section 23546 or subdivision (b) of Section 23550,

or subdivision (d) of Section 23550.5, in which case the person, in addition, shall be sentenced as provided in paragraph (3) of subdivision (e) of Section 14601.3.

(e) If any person is convicted of a first offense under this section and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for at least 10 days.

(f) If the offense occurred within five years of a prior offense that resulted in a conviction of a violation of this section or Section 14601, 14601.1, or 14601.5 and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for at least 30 days.

(g) If any person is convicted of a second or subsequent offense that results in a conviction of this section within seven years, but over five years, of a prior offense that resulted in a conviction of a violation of this section or Section 14601, 14601.1, or 14601.5 and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for at least 10 days.

(h) Pursuant to Section 23575, the court shall require any person convicted of a violation of this section to install a certified ignition interlock device on any vehicle the person owns or operates.

(i) Nothing in this section prohibits a person who is participating in, or has completed, an alcohol or drug rehabilitation program from driving a motor vehicle that is owned or utilized by the person's employer, during the course of employment on private property that is owned or utilized by the employer, except an offstreet parking facility as defined in subdivision (c) of Section 12500.

(j) This section also applies to the operation of an off-highway motor vehicle on those lands to which the Chappie-Z'berg Off-Highway Motor Vehicle Law of 1971 (Division 16.5 (commencing with Section 38000)) applies as to off-highway motor vehicles, as described in Section 38001.

(k) 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. 16.5. Section 14601.2 is added to the Vehicle Code, to read:

14601.2. (a) No person shall drive a motor vehicle at any time when that person's driving privilege is suspended or revoked for a conviction of a violation of Section 23152 or 23153 if the person so driving has knowledge of the suspension or revocation.

(b) Except in full compliance with the restriction, no person shall drive a motor vehicle at any time when that person's driving privilege is restricted, if the person so driving has knowledge of the restriction.

(c) Knowledge of suspension or revocation of the driving privilege shall be conclusively presumed if mailed notice has been given by the

department to the person pursuant to Section 13106. Knowledge of restriction of the driving privilege shall be presumed if notice has been given by the court to the person. The presumption established by this subdivision is a presumption affecting the burden of proof.

(d) Any person convicted of a violation of this section shall be punished as follows:

(1) Upon a first conviction, by imprisonment in the county jail for not less than 10 days or more than six months and by a fine of not less than three hundred dollars ($300) or more than one thousand dollars ($1,000), unless the person has been designated an habitual traffic offender under subdivision (b) of Section 23546, subdivision (d) of Section 23550, or subdivision (b) of Section 23550.5, in which case the person, in addition, shall be sentenced as provided in paragraph (3) of subdivision (e) of Section 14601.3.

(2) If the offense occurred within five years of a prior offense that resulted in a conviction of a violation of this section or Section 14601, 14601.1, or 14601.5, by imprisonment in the county jail for not less than 30 days or more than one year and by a fine of not less than five hundred dollars ($500) or more than two thousand dollars ($2,000), unless the person has been designated an habitual traffic offender under subdivision (b) of Section 23546, subdivision (b) of Section 23550, or subdivision (d) of Section 23550.5, in which case the person, in addition, shall be sentenced as provided in paragraph (3) of subdivision (e) of Section 14601.3.

(e) If a person is convicted of a first offense under this section and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for at least 10 days.

(f) If the offense occurred within five years of a prior offense that resulted in a conviction of a violation of this section or Section 14601, 14601.1, or 14601.5 and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for at least 30 days.

(g) If any person is convicted of a second or subsequent offense that results in a conviction of this section within seven years, but over five years, of a prior offense that resulted in a conviction of a violation of this section or Section 14601, 14601.1, or 14601.5 and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for at least 10 days.

(h) Pursuant to Section 23575, the court shall require any person convicted of a violation of this section to install a certified ignition interlock device on any vehicle the person owns or operates.

(i) Nothing in this section prohibits a person who is participating in, or has completed, an alcohol or drug rehabilitation program from driving a motor vehicle that is owned or utilized by the person's employer,

during the course of employment on private property that is owned or utilized by the employer, except an offstreet parking facility as defined in subdivision (c) of Section 12500.

(j) This section also applies to the operation of an off-highway motor vehicle on those lands to which the Chappie-Z'berg Off-Highway Motor Vehicle Law of 1971 (Division 16.5 (commencing with Section 38000)) applies as to off-highway motor vehicles, as described in Section 38001.

(k) This section shall become operative on September 20, 2005.

SEC. 17. Section 14601.3 of the Vehicle Code is amended to read:

14601.3. (a) It is unlawful for a person whose driving privilege has been suspended or revoked to accumulate a driving record history which results from driving during the period of suspension or revocation. A person who violates this subdivision is designated an habitual traffic offender.

For purposes of this section, a driving record history means any of the following, if the driving occurred during any period of suspension or revocation:

(1) Two or more convictions within a 12-month period of an offense given a violation point count of two pursuant to Section 12810.

(2) Three or more convictions within a 12-month period of an offense given a violation point count of one pursuant to Section 12810.

(3) Three or more accidents within a 12-month period that are subject to the reporting requirements of Section 16000.

(4) Any combination of convictions or accidents, as specified in paragraphs (1) to (3), inclusive, which results during any 12-month period in a violation point count of three or more pursuant to Section 12810.

(b) Knowledge of suspension or revocation of the driving privilege shall be conclusively presumed if mailed notice has been given by the department to the person pursuant to Section 13106. The presumption established by this subdivision is a presumption affecting the burden of proof.

(c) The department, within 30 days of receipt of a duly certified abstract of the record of any court or accident report which results in a person being designated an habitual traffic offender, may execute and transmit by mail a notice of that designation to the office of the district attorney having jurisdiction over the location of the person's last known address as contained in the department's records.

(d) (1) The district attorney, within 30 days of receiving the notice required in subdivision (c), shall inform the department of whether or not the person will be prosecuted for being an habitual traffic offender.

(2) Notwithstanding any other provision of this section, any habitual traffic offender designated under subdivision (b) of Section 23546, subdivision (b) of Section 23550, or subdivision (b) of Section 23550.5,

who is convicted of violating Section 14601.2 shall be sentenced as provided in paragraph (3) of subdivision (e).

(e) Any person convicted under this section of being an habitual traffic offender shall be punished as follows:

(1) Upon a first conviction, by imprisonment in the county jail for 30 days and by a fine of one thousand dollars ($1,000).

(2) Upon a second or any subsequent offense within seven years of a prior conviction under this section, by imprisonment in the county jail for 180 days and by a fine of two thousand dollars ($2,000).

(3) Any habitual traffic offender designated under Section 193.7 of the Penal Code or under subdivision (b) of Section 23546, subdivision (b) of Section 23550, subdivision (b) of Section 23550.5, or subdivision (d) of Section 23566 who is convicted of a violation of Section 14601.2 shall be punished by imprisonment in the county jail for 180 days and by a fine of two thousand dollars ($2,000). The penalty in this paragraph shall be consecutive to that imposed for the violation of any other law.

(f) This section also applies to the operation of an off-highway motor vehicle on those lands to which the Chappie-Z'berg Off-Highway Motor Vehicle Law of 1971 (Division 16.5 (commencing with Section 38000)) applies as to off-highway motor vehicles, as described in Section 38001.

SEC. 18. Section 14601.4 of the Vehicle Code is amended to read:

14601.4. (a) It is unlawful for any person, while driving a vehicle with a license suspended or revoked pursuant to Section 14601.2 to do any act forbidden by law or neglect any duty imposed by law in the driving of the vehicle, which act or neglect proximately causes bodily injury to any person other than the driver. In proving the person neglected any duty imposed by law in the driving of the vehicle, it is not necessary to prove that any specific section of this code was violated.

(b) Any person convicted under this section shall be imprisoned in the county jail and shall not be released upon work release, community service, or any other release program before the minimum period of imprisonment, prescribed in Section 14601.2, is served. If a person is convicted of that offense and is granted probation, the court shall require that the person convicted serve at least the minimum time of imprisonment, as specified in those sections, as a term or condition of probation.

(c) When the prosecution agrees to a plea of guilty or nolo contendere to a charge of a violation of this section in satisfaction of, or as a substitute for, an original charge of a violation of Section 14601.2, and the court accepts that plea, except, in the interest of justice, when the court finds it should be inappropriate, the court shall, pursuant to Section 23575, require the person convicted, in addition to any other requirements, to install a certified ignition interlock device on any

vehicle that the person owns or operates for a period not to exceed three years.

(d) This section also applies to the operation of an off-highway motor vehicle on those lands to which the Chappie-Z'berg Off-Highway Motor Vehicle Law of 1971 (Division 16.5 (commencing with Section 38000)) applies as to off-highway motor vehicles, as described in Section 38001.

SEC. 19. Section 14601.5 of the Vehicle Code is amended to read:

14601.5. (a) No person shall drive a motor vehicle at any time when that person's driving privilege is suspended or revoked pursuant to Section 13353, 13353.1, or 13353.2 and that person has knowledge of the suspension or revocation.

(b) Except in full compliance with the restriction, no person shall drive a motor vehicle at any time when that person's driving privilege is restricted pursuant to Section 13353.6, 13353.7, or 13353.8 and that person has knowledge of the restriction.

(c) Knowledge of suspension, revocation, or restriction of the driving privilege shall be conclusively presumed if notice has been given by the department to the person pursuant to Section 13106. The presumption established by this subdivision is a presumption affecting the burden of proof.

(d) Any person convicted of a violation of this section shall be punished as follows:

(1) Upon a first conviction, by imprisonment in the county jail for not more than six months or by a fine of not less than three hundred dollars ($300) or more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(2) If the offense occurred within five years of a prior offense which resulted in a conviction for a violation of this section or Section 14601, 14601.1, 14601.2, or 14601.3, by imprisonment in the county jail for not less than 10 days or more than one year, and by a fine of not less than five hundred dollars ($500) or more than two thousand dollars ($2,000).

(e) In imposing the minimum fine required by subdivision (d), the court shall take into consideration the defendant's ability to pay the fine and may, in the interest of justice, and for reasons stated in the record, reduce the amount of that minimum fine to less than the amount otherwise imposed.

(f) Nothing in this section prohibits a person who is participating in, or has completed, an alcohol or drug rehabilitation program from driving a motor vehicle, that is owned or utilized by the person's employer, during the course of employment on private property that is owned or utilized by the employer, except an offstreet parking facility as defined in subdivision (d) of Section 12500.

(g) When the prosecution agrees to a plea of guilty or nolo contendere to a charge of a violation of this section in satisfaction of, or as a

substitute for, an original charge of a violation of Section 14601.2, and the court accepts that plea, except, in the interest of justice, when the court finds it would be inappropriate, the court shall, pursuant to Section 23575, require the person convicted, in addition to any other requirements, to install a certified ignition interlock device on any vehicle that the person owns or operates for a period not to exceed three years.

(h) This section also applies to the operation of an off-highway motor vehicle on those lands to which the Chappie-Z'berg Off-Highway Motor Vehicle Law of 1971 (Division 16.5 (commencing with Section 38000)) applies as to off-highway motor vehicles, as described in Section 38001.

SEC. 19.3. Section 14601.5 of the Vehicle Code is amended to read:

14601.5. (a) No person shall drive a motor vehicle at any time when that person's driving privilege is suspended or revoked pursuant to Section 13353, 13353.1, or 13353.2 and that person has knowledge of the suspension or revocation.

(b) Except in full compliance with the restriction, no person drive a motor vehicle at any time when that person's driving privilege is restricted pursuant to Section 13353.6, 13353.7, or 13353.8 and that person has knowledge of the restriction.

(c) Knowledge of suspension, revocation, or restriction of the driving privilege shall be conclusively presumed if notice has been given by the department to the person pursuant to Section 13106. The presumption established by this subdivision is a presumption affecting the burden of proof.

(d) Any person convicted of a violation of this section shall be punished as follows:

(1) Upon a first conviction, by imprisonment in the county jail for not more than six months or by a fine of not less than three hundred dollars ($300) or more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(2) If the offense occurred within five years of a prior offense which resulted in a conviction for a violation of this section or Section 14601, 14601.1, 14601.2, or 14601.3, by imprisonment in the county jail for not less than 10 days or more than one year, and by a fine of not less than five hundred dollars ($500) or more than two thousand dollars ($2,000).

(e) In imposing the minimum fine required by subdivision (d), the court shall take into consideration the defendant's ability to pay the fine and may, in the interest of justice, and for reasons stated in the record, reduce the amount of that minimum fine to less than the amount otherwise imposed.

(f) Nothing in this section prohibits a person who is participating in, or has completed, an alcohol or drug rehabilitation program from driving a motor vehicle, that is owned or utilized by the person's employer,

during the course of employment on private property that is owned or utilized by the employer, except an offstreet parking facility as defined in subdivision (d) of Section 12500.

(g) When the prosecution agrees to a plea of guilty or nolo contendere to a charge of a violation of this section in satisfaction of, or as a substitute for, an original charge of a violation of Section 14601.2, and the court accepts that plea, except, in the interest of justice, when the court finds it would be inappropriate, the court shall, pursuant to Section 23575, require the person convicted, in addition to any other requirements, to install a certified ignition interlock device on any vehicle that the person owns or operates for a period not to exceed three years.

(h) This section also applies to the operation of an off-highway motor vehicle on those lands to which the Chappie-Z'berg Off-Highway Motor Vehicle Law of 1971 (Division 16.5 (commencing with Section 38000)) applies as to off-highway motor vehicles, as described in Section 38001.

(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. 19.5. Section 14601.5 is added to the Vehicle Code, to read:

14601.5. (a) A person may not drive a motor vehicle at any time when that person's driving privilege is suspended or revoked pursuant to Section 13353, 13353.1, or 13353.2 and that person has knowledge of the suspension or revocation.

(b) Except in full compliance with the restriction, a person may not drive a motor vehicle at any time when that person's driving privilege is restricted pursuant to Section 13353.7 or 13353.8 and that person has knowledge of the restriction.

(c) Knowledge of suspension, revocation, or restriction of the driving privilege shall be conclusively presumed if notice has been given by the department to the person pursuant to Section 13106. The presumption established by this subdivision is a presumption affecting the burden of proof.

(d) A person convicted of a violation of this section is punishable, as follows:

(1) Upon a first conviction, by imprisonment in the county jail for not more than six months or by a fine of not less than three hundred dollars ($300) or more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(2) If the offense occurred within five years of a prior offense that resulted in a conviction for a violation of this section or Section 14601, 14601.1, 14601.2, or 14601.3, by imprisonment in the county jail for not

less than 10 days or more than one year, and by a fine of not less than five hundred dollars ($500) or more than two thousand dollars ($2,000).

(e) In imposing the minimum fine required by subdivision (d), the court shall take into consideration the defendant's ability to pay the fine and may, in the interest of justice, and for reasons stated in the record, reduce the amount of that minimum fine to less than the amount otherwise imposed.

(f) This section does not prohibit a person who is participating in, or has completed, an alcohol or drug rehabilitation program from driving a motor vehicle, that is owned or utilized by the person's employer, during the course of employment on private property that is owned or utilized by the employer, except an offstreet parking facility as defined in subdivision (d) of Section 12500.

(g) When the prosecution agrees to a plea of guilty or nolo contendere to a charge of a violation of this section in satisfaction of, or as a substitute for, an original charge of a violation of Section 14601.2, and the court accepts that plea, except, in the interest of justice, when the court finds it would be inappropriate, the court shall, pursuant to Section 23575, require the person convicted, in addition to any other requirements, to install a certified ignition interlock device on any vehicle that the person owns or operates for a period not to exceed three years.

(h) This section also applies to the operation of an off-highway motor vehicle on those lands to which the Chappie-Z'berg Off-Highway Motor Vehicle Law of 1971 (Division 16.5 (commencing with Section 38000)) applies as to off-highway motor vehicles, as described in Section 38001.

(i) This section shall become operative on September 20, 2005.

SEC. 20. Section 38020 of the Vehicle Code is amended to read:

38020. Except as otherwise provided in this division, no person shall operate, transport, or leave standing any off-highway motor vehicle subject to identification under this code which is not registered under the provisions of Division 3 (commencing with Section 4000), unless it is identified under the provisions of this chapter. A violation of this section is an infraction. Riding in violation of seasons established by Section 2412(f) and 2415 of Title 13 of the California Code of Regulations constitutes a violation of this section. This section shall not apply to the operation, transportation, or leaving standing of an off-highway vehicle pursuant to a valid special permit.

SEC. 21. Section 38240 of the Vehicle Code is amended to read:

38240. (a) The Controller shall allocate the fees collected under Section 38230 in July and January of each fiscal year in the same manner as fees are allocated under subdivisions (c) and (d) of Section 11005 of the Revenue and Taxation Code.

(b) The funds collected under Section 38230 shall be used for the purposes set forth in Sections 5090.50 and 5090.64 of the Public Resources Code.

(c) In addition to the purposes described in subdivision (b), funds received by a city or county pursuant to this section may be expended for facilities located outside the limits of the city or county if both of the following conditions are met:

(1) The funds are expended for the purposes of acquiring, developing, and constructing trails, areas, or other facilities for the use of off-highway motor vehicles.

(2) The funds are expended pursuant to agreement with the city in which the facility is located or with the county in which the facility is located if the facility is located in an unincorporated territory.

(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. 22. Section 38240 is added to the Vehicle Code, to read:

38240. (a) The Controller shall allocate the fees collected under Section 38230 in July and January of each fiscal year to cities and counties based upon the proportional estimated off-highway motor vehicle use and related activity within the respective jurisdictions pursuant to the report described in subdivision (d) of Section 5090.15 of the Public Resources Code.

(b) The funds collected under Section 38230 shall be used for the purposes set forth in Sections 5090.50 and 5090.64 of the Public Resources Code.

(c) In addition to the purposes set forth in subdivision (b), funds received by a city or county pursuant to this section may be expended for facilities located outside the limits of the city or county if both of the following conditions are met:

(1) The funds are expended for the purposes of acquiring, developing, and constructing trails, areas, or other facilities for the use of off-highway motor vehicles.

(2) The funds are expended pursuant to an agreement with the city in which the facility is located or with the county in which the facility is located if the facility is located in an unincorporated territory.

(d) This section shall become operative on January 1, 2006.

SEC. 23. Section 38241 of the Vehicle Code is amended to read:

38241. Any city, county, or city and county may apply to the population research unit of the Department of Finance to estimate its population. The department may make the estimate if in the opinion of the department there is available adequate information upon which to base the estimate. Not less than 25 days nor more than 30 days after the completion of the estimate, the Department of Finance shall file a

certified copy thereof with the Controller if the estimate is greater than the current certified population. This certification may be made once each fiscal year.

All payments under Section 38240 for any allocation subsequent to the filing of the estimate shall be based upon the population so estimated until a subsequent certification is made by the Department of Finance or a subsequent federal decennial census is made.

Population changes based on a federal or state special census or estimate validated by the Department of Finance shall be accepted by the Controller only if certified to him or her at the request of the Department of Finance. The request shall be made only if the census or estimate is greater than the current certified population and shall become effective on the first day of the month following receipt of the certification.

The Department of Finance may assess a reasonable charge, not to exceed the actual cost thereof, for the preparation of population estimates pursuant to this section, which is a proper charge against the city, county or city and county applying therefor. The amount received shall be deposited in the State Treasury as a reimbursement to be credited to the appropriation from which the expenditure is made.

As of May 1, 1988, any population estimate prepared by the Department of Finance pursuant to Section 2227 of the Revenue and Taxation Code may be used for all purposes of this section unless a written request not to certify is received by the department from the city, city and county, or county within 25 days of completion of the estimate.

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 38346 is added to the Vehicle Code, to read:

38346. A person shall not display a flashing or steady burning red or blue warning light on an off-highway motor vehicle except as permitted by Section 21055 or when an extreme hazard exists.

SEC. 25. Section 38370 of the Vehicle Code is amended to read:

38370. (a) The Department of Motor Vehicles shall not identify any new off-highway motor vehicle, which is subject to identification and which produces a maximum noise level that exceeds the following noise limit, at a distance of 50 feet from the centerline of travel, under test procedures established by the Department of the California Highway Patrol.

(1) Any such vehicle manufactured before January 1, 1973 . .	92 dBA
(2) Any such vehicle manufactured on or after January 1, 1973, and before January 1, 1975	88 dBA
(3) Any such vehicle manufactured on or after January 1, 1975, and before January 1, 1986	86 dBA
(4) Any such vehicle manufactured on or after January 1, 1986	82 dBA

(b) The department may accept a dealer's certificate as proof of compliance with this section.

(c) Test procedures for compliance with this section shall be established by the Department of the California Highway Patrol, taking into consideration the test procedures of the Society of Automotive Engineers.

(d) No person shall sell or offer for sale any new off-highway motor vehicle which is subject to identification and which produces a maximum noise level that exceeds the noise limits in subdivision (a), and for which noise emission standards or regulations have not been adopted by the Administrator of the Environmental Protection Agency pursuant to the Federal Noise Control Act of 1972 (P.L. 92-574).

(e) No person shall sell or offer for sale any new off-highway motor vehicle which is subject to identification and which produces a noise level that exceeds, or in any way violates, the noise emission standards or regulations adopted for such a motor vehicle by the Administrator of the Environmental Protection Agency pursuant to the Federal Noise Control Act of 1972 (P.L. 92-574).

(f) As used in this section, the term ''identify'' is equivalent to the term "licensing'' as used in Section 6(e)(2) of the Federal Noise Control Act of 1972 (P.L. 92-574).

(g) Any off-highway motor vehicle, when operating pursuant to Section 38001, shall at all times be equipped with a silencer, or other device, which limits noise emissions to not more than 101 dBA if manufactured on or after January 1, 1975, or 105 dBA if manufactured before January 1, 1975, when measured from a distance of 20 inches using test procedures established by the Society of Automotive Engineers under Standard J-1287. This subdivision shall only be operative until January 1, 2003.

(h) On and after January 1, 2003, off-highway motor vehicles, when operating pursuant to Section 38001, shall at all times be equipped with a silencer, or other device, which limits noise emissions.

(1) Noise emissions of competition off-highway vehicles manufactured on or after January 1, 1998, shall be limited to not more than 96 dBA, and if manufactured prior to January 1, 1998, to not more

than 101 dBA, when measured from a distance of 20 inches using test procedures established by the Society of Automotive Engineers under Standard J-1287, as applicable. Noise emissions of all other off-highway vehicles shall be limited to not more than 96 dBA if manufactured on or after January 1, 1986, and not more than 101 dBA if manufactured prior to January 1, 1986, when measured from a distance of 20 inches using test procedures established by the Society of Automotive Engineers under Standard J-1287, as applicable.

(2) The Off-Highway Motor Vehicle Recreation Division of the Department of Parks and Recreation shall evaluate and reassess the dates specified in paragraph (1) and include the findings and recommendations in the noise report required in subdivision (o) of Section 5090.32 of the Public Resources Code.

(i) Off-highway vehicle manufacturers or their agents prior to the sale to the general public in California of any new off-highway vehicle model manufactured after January 1, 2003, shall provide to the Off-Highway Motor Vehicle Recreation Division of the California Department of Parks and Recreation rpm data needed to conduct the J-1287 test, where applicable.

SEC. 26. Section 38375 is added to the Vehicle Code, to read:

38375. (a) An off-highway motor vehicle, except an authorized emergency vehicle, shall not be equipped with a siren.

(b) A person driving an off-highway motor vehicle, except the driver of an authorized emergency vehicle as permitted by Section 21055, shall not use a siren.

SEC. 27. Section 40610 of the Vehicle Code is amended to read:

40610. (a) (1) Except as provided in paragraph (2), if, after an arrest, accident investigation, or other law enforcement action, it appears that a violation has occurred involving a registration, license, all-terrain vehicle safety certificate, or mechanical requirement of this code, and none of the disqualifying conditions set forth in subdivision (b) exist and the investigating officer decides to take enforcement action, the officer shall prepare, in triplicate, and the violator shall sign, a written notice containing the violator's promise to correct the alleged violation and to deliver proof of correction of the violation to the issuing agency.

(2) If any person is arrested for a violation of Section 4454, and none of the disqualifying conditions set forth in subdivision (b) exist, the arresting officer shall prepare, in triplicate, and the violator shall sign, a written notice containing the violator's promise to correct the alleged violation and to deliver proof of correction of the violation to the issuing agency. In lieu of issuing a notice to correct violation pursuant to this section, the officer may issue a notice to appear, as specified in Section 40522.

(b) Pursuant to subdivision (a), a notice to correct violation shall be issued as provided in this section or a notice to appear shall be issued as provided in Section 40522, unless the officer finds any of the following:

(1) Evidence of fraud or persistent neglect.

(2) The violation presents an immediate safety hazard.

(3) The violator does not agree to, or cannot, promptly correct the violation.

(c) If any of the conditions set forth in subdivision (b) exist, the procedures specified in this section or Section 40522 are inapplicable, and the officer may take other appropriate enforcement action.

(d) Except as otherwise provided in subdivision (a), the notice to correct violation shall be on a form approved by the Judicial Council and, in addition to the owner's or operator's address and identifying information, shall contain an estimate of the reasonable time required for correction and proof of correction of the particular defect, not to exceed 30 days, or 90 days for the all-terrain vehicle safety certificate.

SEC. 28. Sections 16.3 and 16.5 of this bill incorporate amendments to Section 14601.2 of the Vehicle Code proposed by both this bill and SB 1697. Sections 16.3 and 16.5 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 14601.2 of the Vehicle Code, and (3) this bill is enacted after SB 1697, in which case Section 16 of this bill shall not become operative.

SEC. 29. Sections 19.3 and 19.5 of this bill incorporate amendments to Section 14601.5 of the Vehicle Code proposed by both this bill and AB 3049. Sections 19.3 and 19.5 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 14601.5 of the Vehicle Code, and (3) this bill is enacted after AB 3049, in which case Section 19 of this bill shall not become operative.

SEC. 30. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 909

An act to amend Sections 144, 473.6, 474, 1645.1, 2220.1, 2439, 2531, 2531.1, 2570.19, 3014.6, 4200.3, 4928, 4934, 4980.40, 4980.50, 4984.7, 4986.21, 4986.80, 4992.1, 4996.3, 4996.4, 5081.1, 5082.2, 5083, 5084, 7069, 7153.1, 7303.2, and 7583.6 of, to amend and renumber Section 3010.1 of, to amend and repeal Sections 5090, 5092, and 5093 of, and to amend the heading of Division 1.2 (commencing with Section 473) of, the Business and Professions Code, to amend Section 94779.1 of the Education Code, to amend and repeal Sections 12231 and 14999 of the Government Code, to amend and repeal Section 80.2 of the Harbors and Navigation Code, and to amend and repeal Section 5090.15 of the Public Resources Code, relating to consumer protection, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 2004.]

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

SECTION 1. The heading of Division 1.2 (commencing with Section 473) of the Business and Professions Code is amended to read:

DIVISION 1.2. JOINT COMMITTEE ON BOARDS, COMMISSIONS, AND CONSUMER PROTECTION

SEC. 1.2. Section 144 of the Business and Professions Code is amended to read:

144. (a) Notwithstanding any other provision of law, an agency designated in subdivision (b) shall require an applicant to furnish to the agency a full set of fingerprints for purposes of conducting criminal history record checks. Any agency designated in subdivision (b) may obtain and receive, at its discretion, criminal history information from the Department of Justice and the United States Federal Bureau of Investigation.

(b) Subdivision (a) applies to the following:

(1) California Board of Accountancy.

(2) State Athletic Commission.

(3) Board of Behavioral Sciences.

(4) Court Reporters Board of California.

(5) State Board of Guide Dogs for the Blind.

(6) California State Board of Pharmacy.

(7) Board of Registered Nursing.

(8) Veterinary Medical Board.

(9) Registered Veterinary Technician Committee.

(10) Board of Vocational Nursing and Psychiatric Technicians.
(11) Respiratory Care Board of California.
(12) Hearing Aid Dispensers Advisory Commission.
(13) Physical Therapy Board of California.
(14) Physician Assistant Committee of the Medical Board of California.
(15) Speech-Language Pathology and Audiology Board.
(16) Medical Board of California.
(17) State Board of Optometry.
(18) Acupuncture Board.
(19) Cemetery and Funeral Bureau.
(20) Bureau of Security and Investigative Services.
(21) Division of Investigation.
(22) Board of Psychology.
(23) The California Board of Occupational Therapy.
(24) Structural Pest Control Board.
(25) Contractors' State License Board.
(26) Bureau of Naturopathic Medicine.

(c) The provisions of paragraph (24) of subdivision (b) shall become operative on July 1, 2004. The provisions of paragraph (25) of subdivision (b) shall become operative on the date on which sufficient funds are available for the Contractors' State License Board and the Department of Justice to conduct a criminal history record check pursuant to this section or on July 1, 2005, whichever occurs first.

SEC. 1.5. Section 473.6 of the Business and Professions Code is amended to read:

473.6. The chairpersons of the appropriate policy committees of the Legislature may refer to the Joint Committee on Boards, Commissions, and Consumer Protection for review of any legislative issues or proposals to create new licensure or regulatory categories, change licensing requirements, modify scope of practice, or create a new licensing board under the provisions of this code or pursuant to Chapter 1.5 (commencing with Section 9148) of Part 1 of Division 2 of Title 2 of the Government Code.

SEC. 1.7. Section 474 of the Business and Professions Code is amended to read:

474. The Joint Committee on Boards, Commissions, and Consumer Protection established pursuant to Section 473 shall review all state boards as defined in Section 9148.2 of the Government Code, in addition to boards subject to review pursuant to Chapter 1 (commencing with Section 473), every four years or over another time period as determined by the committee.

SEC. 2. Section 1645.1 of the Business and Professions Code is amended to read:

1645.1. (a) By January 1, 2006, a person who holds a registered dental assistant license shall provide evidence of having successfully completed board-approved courses in radiation safety and coronal polishing. The length and content of the courses shall be governed by applicable board regulations. Failure to comply with this section shall result in automatic suspension of the license, which shall be reinstated upon the receipt of evidence that the licensee has successfully completed the required courses. Completion of the courses may be counted toward fulfillment of the continuing education requirements governed by Section 1645.

(b) The holder of an inactive registered dental assistant license is only required to comply with subdivision (a) as a condition of returning his or her license to active status.

SEC. 3. Section 2220.1 of the Business and Professions Code is amended to read:

2220.1. (a) (1) The director shall appoint a Medical Board of California Enforcement Program Monitor prior to March 31, 2003. The director may retain a person for this position by a personal services contract, the Legislature finding, pursuant to Section 19130 of the Government Code, that this is a new state function.

(2) The director shall supervise the enforcement program monitor and may terminate or dismiss him or her from this position.

(b) The director shall advertise the availability of this position. The requirements for this position include experience in conducting investigations and familiarity with state laws, rules, and procedures pertaining to the board and with relevant administrative procedures.

(c) (1) The enforcement program monitor shall monitor and evaluate the disciplinary system and procedures of the board, making as his or her highest priority the reform and reengineering of the board's enforcement program and operations and the improvement of the overall efficiency of the board's disciplinary system.

(2) This monitoring duty shall be performed on a continuing basis for a period not exceeding two years from the date of the enforcement program monitor's appointment and shall include, but not be limited to, improving the quality and consistency of complaint processing and investigation, reducing the timeframes for completing complaint processing and investigation, reducing any complaint backlog, assessing the relative value to the board of various sources of complaints or information available to the board about licensees in identifying licensees who practice substandard care causing serious patient harm, assuring consistency in the application of sanctions or discipline imposed on licensees, and shall include the following areas: the accurate and consistent implementation of the laws and rules affecting discipline, appropriate application of investigation and prosecution priorities,

particularly with respect to priority cases, as defined in Section 2220.05, board and Attorney General staff, defense bar, licensee, and patients' concerns regarding disciplinary matters or procedures, and the board's cooperation with other governmental entities charged with enforcing related laws and regulations regarding physicians and surgeons. The enforcement program monitor shall also evaluate the method used by investigators in the regional offices for selecting experts to review cases to determine if the experts are selected on an impartial basis and to recommend methods of improving the selection process. The enforcement program monitor shall also evaluate the effectiveness and efficiency of the board's diversion program and make recommendations regarding the continuation of the program and any changes or reforms required to assure that physicians and surgeons participating in the program are appropriately monitored and the public is protected from physicians and surgeons who are impaired due to alcohol or drug abuse or mental or physical illness.

(3) The enforcement program monitor shall exercise no authority over the board's discipline operations or staff; however, the board and its staff shall cooperate with him or her, and the board shall provide data, information, and case files as requested by the enforcement program monitor to perform all of his or her duties. The provision of confidential data, information, and case files by the board to the enforcement program monitor at any time after the appointment of the monitor shall not constitute a waiver of any exemption from disclosure or discovery or of any confidentiality protection or privilege otherwise provided by law that is applicable to the data, information, or case files.

(4) The director shall assist the enforcement program monitor in the performance of his or her duties, and the enforcement program monitor shall have the same investigative authority as the director.

(d) The enforcement program monitor shall submit an initial written report of his or her findings and conclusions to the board, the department, and the Legislature no later than November 1, 2004, and be available to make oral reports if requested to do so. The initial report shall include an analysis of the sources of information that resulted in each disciplinary action imposed since January 1, 2003, involving priority cases, as defined in Section 2220.05. The enforcement program monitor may also provide additional information to either the department or the Legislature at his or her discretion or at the request of either the department or the Legislature. The enforcement program monitor shall make his or her reports available to the public or the media. The enforcement program monitor shall make every effort to provide the board with an opportunity to reply to any facts, findings, issues, or conclusions in his or her reports with which the board may disagree.

(e) The board shall reimburse the department for all of the costs associated with the employment of an enforcement program monitor.

(f) The enforcement program monitor shall issue a final report prior to November 1, 2005. The final report shall include final findings and conclusions on the topics addressed in the initial report submitted by the monitor pursuant to subdivision (d).

(g) This section shall become inoperative on January 1, 2006, and as of January 1, 2006, shall be repealed, unless a later enacted statute, which is enacted before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3.5. Section 2439 of the Business and Professions Code is amended to read:

2439. (a) Every licensee is exempt from the payment of the renewal fee and requirement for continuing medical education if the licensee has applied to the Division of Licensing for a retired license. The holder of a retired license may not engage in the practice of medicine or the practice of podiatric medicine.

(b) If a physician and surgeon has applied to convert from retired status to active status on or after January 1, 2004, but prior to January 1, 2005, the fee to change license status shall be waived, unless the change in status coincides with the physician and surgeon's license renewal date. The board shall refund any fees paid by a physician and surgeon to change from retired to active status after January 1, 2004, and before January 1, 2005, unless the change in status coincides with the physician and surgeon's license renewal date.

SEC. 4. Section 2531 of the Business and Professions Code is amended to read:

2531. There is in the Department of Consumer Affairs a Speech-Language Pathology and Audiology Board in which the enforcement and administration of this chapter is vested. The Speech-Language Pathology and Audiology Board shall consist of nine members, three of whom shall be public members.

This section shall become inoperative on July 1, 2007, and, as of January 1, 2008, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2008, deletes or extends the inoperative and repeal dates.

SEC. 4.5. Section 2531.1 of the Business and Professions Code is amended to read:

2531.1. (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 has elapsed since the expiration of the term for which he or she was appointed, whichever first occurs. No member may serve for more than two consecutive terms.

(b) Notwithstanding the four-year terms set by subdivision (a), commencing on November 30, 2004, members appointed to the board shall serve the terms set forth below. Each of these terms shall count as a full term for purposes of subdivision (a).

(1) The two public members appointed by the Senate Committee on Rules and the Speaker of the Assembly, respectively, shall each serve a term of one year.

(2) One licensed speech-language pathologist and one licensed audiologist, as designated by the appointing power, shall each serve a term of two years.

(3) One licensed speech-language pathologist and one licensed audiologist, as designated by the appointing power, and the public member who is a licensed physician and surgeon, board certified in otaryngology, shall each serve a term of three years.

(4) One licensed speech-language pathologist and one licensed audiologist, as designated by the appointing power, shall each serve a term of four years.

(c) Upon completion of each of the terms described in subdivision (b), a succeeding member shall be appointed to the board for a term of four years.

SEC. 5. Section 2570.19 of the Business and Professions Code is amended to read:

2570.19. (a) There is hereby created a California Board of Occupational Therapy, hereafter referred to as the board. The board shall enforce and administer this chapter.

(b) The members of the board shall consist of the following:

(1) Three occupational therapists who shall have practiced occupational therapy for five years.

(2) One occupational therapy assistant who shall have assisted in the practice of occupational therapy for five years.

(3) Three public members who shall not be licentiates of the board or of any board referred to in Section 1000 or 3600.

(c) The Governor shall appoint the three occupational therapists and one occupational therapy assistant to be members of the board. The Governor, the Senate Rules Committee, and the Speaker of the Assembly shall each appoint a public member. Not more than one member of the board shall be appointed from the full-time faculty of any university, college, or other educational institution.

(d) All members shall be residents of California at the time of their appointment. The occupational therapist and occupational therapy assistant members shall have been engaged in rendering occupational therapy services to the public, teaching, or research in occupational therapy for at least five years preceding their appointments.

(e) The public members may not be or have ever been occupational therapists or occupational therapy assistants or in training to become occupational therapists or occupational therapy assistants. The public members may not be related to or have a household member who is an occupational therapist or an occupational therapy assistant, and may not have had within two years of the appointment a substantial financial interest in a person regulated by the board.

(f) The Governor shall appoint two board members for a term of one year, two board members for a term of two years, and one board member for a term of three years. Appointments made thereafter shall be for four-year terms, but no person shall be appointed to serve more than two consecutive terms. Terms shall begin on the first day of the calendar year and end on the last day of the calendar year or until successors are appointed, except for the first appointed members who shall serve through the last calendar day of the year in which they are appointed, before commencing the terms prescribed by this section. Vacancies shall be filled by appointment for the unexpired term. The board shall annually elect one of its members as president.

(g) The board shall meet and hold at least one regular meeting annually in the Cities of Sacramento, Los Angeles, and San Francisco. The board may convene from time to time until its business is concluded. Special meetings of the board may be held at any time and place designated by the board.

(h) Notice of each meeting of the board shall be given 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).

(i) Members of the board shall receive no compensation for their services but shall be entitled to reasonable travel and other expenses incurred in the execution of their powers and duties in accordance with Section 103.

(j) The appointing power shall have the power to remove any member of the board from office for neglect of any duty imposed by state law, for incompetency, or for unprofessional or dishonorable conduct.

(k) A loan is hereby authorized from the General Fund to the Occupational Therapy Fund on or after July 1, 2000, in an amount of up to one million dollars ($1,000,000) to fund operating, personnel, and other startup costs of the board. Six hundred ten thousand dollars ($610,000) of this loan amount is hereby appropriated to the board to use in the 2000–01 fiscal year for the purposes described in this subdivision. In subsequent years, funds from the Occupational Therapy Fund shall be available to the board upon appropriation by the Legislature in the annual Budget Act. The loan shall be repaid to the General Fund over a period of up to five years, and the amount paid shall also include interest

at the rate accruing to moneys in the Pooled Money Investment Account. The loan amount and repayment period shall be minimized to the extent possible based upon actual board financing requirements as determined by the Department of Finance.

(*l*) This section shall become inoperative on July 1, 2007, and, as of January 1, 2008, is repealed, unless a later enacted statute that is enacted before January 1, 2008, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 6. Section 3010.1 of the Business and Professions Code, as added by Section 16 of Chapter 1150 of the Statutes of 2002, is amended and renumbered to read:

3010.5. (a) There is in the Department of Consumer Affairs a State Board of Optometry in which the enforcement of this chapter is vested. The board consists of 11 members, five of whom shall be public members.

Six members of the board shall constitute a quorum.

(b) The board shall, with respect to conducting investigations, inquiries, and disciplinary actions and proceedings, have the authority previously vested in the board as created pursuant to Section 3010. The board may enforce any disciplinary actions undertaken by that board.

(c) This section shall remain in effect only until July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends that date.

SEC. 7. Section 3014.6 of the Business and Professions Code is amended to read:

3014.6. (a) The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

(b) This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 8. Section 4200.3 of the Business and Professions Code is amended to read:

4200.3. (a) The examination process shall be regularly reviewed pursuant to Section 139.

(b) The examination process shall meet the standards and guidelines set forth in the Standards for Educational and Psychological Testing and the Federal Uniform Guidelines for Employee Selection Procedures. The board shall work with the Office of Examination Resources of the department or with an equivalent organization who shall certify at

minimum once every five years that the examination process meets these national testing standards. If the department determines that the examination process fails to meet these standards, the board shall terminate its use of the North American Pharmacy Licensure Examination and shall use only the written and practical examination developed by the board.

(c) The examination shall meet the mandates of subdivision (a) of Section 12944 of the Government Code.

(d) The board shall work with the Office of Examination Resources or with an equivalent organization to develop the state jurisprudence examination to ensure that applicants for licensure are evaluated on their knowledge of applicable state laws and regulations.

(e) The board shall annually publish the pass and fail rates for the pharmacist's licensure examination administered pursuant to Section 4200, including a comparison of historical pass and fail rates before utilization of the North American Pharmacist Licensure Examination.

(f) The board shall report to the Joint Committee on Boards, Commissions, and Consumer Protection and the department as part of its next scheduled review, the pass rates of applicants who sat for the national examination compared with the pass rates of applicants who sat for the prior state examination. This report shall be a component of the evaluation of the examination process that is based on psychometrically sound principles for establishing minimum qualifications and levels of competency.

SEC. 8.5. Section 4928 of the Business and Professions Code is amended to read:

4928. The Acupuncture Board, which consists of nine members, shall enforce and administer this chapter.

This section shall become inoperative on July 1, 2006, and, as of January 1, 2007, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.

The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 9. Section 4934 of the Business and Professions Code is amended to read:

4934. The board shall employ personnel necessary for the administration of this chapter; however, the board may appoint an executive officer who is exempt from the provisions of the Civil Service Act.

This section shall become inoperative on July 1, 2006, and, as of January 1, 2007, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.

The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 10. Section 4980.40 of the Business and Professions Code is amended to read:

4980.40. To qualify for a license, an applicant shall have all the following qualifications:

(a) Applicants applying for licensure on or after January 1, 1988, shall possess a doctor's or master's degree in marriage, family, and child counseling, marital and family therapy, psychology, clinical psychology, counseling psychology, or counseling with an emphasis in either marriage, family, and child counseling or marriage and family therapy, obtained from a school, college, or university accredited by the Western Association of Schools and Colleges, or approved by the Bureau for Private Postsecondary and Vocational Education. The board has the authority to make the final determination as to whether a degree meets all requirements, including, but not limited to, course requirements, regardless of accreditation or approval. For purposes of this chapter, the term ''approved by the Bureau for Private Postsecondary and Vocational Education'' shall mean unconditional approval existing at the time of the applicant's graduation from the school, college, or university. In order to qualify for licensure pursuant to this subdivision, a doctor's or master's degree program shall be a single, integrated program primarily designed to train marriage and family therapists and shall contain no less than 48 semester or 72 quarter units of instruction. The instruction shall include no less than 12 semester units or 18 quarter units of coursework in the areas of marriage, family, and child counseling, and marital and family systems approaches to treatment.

The coursework shall include all of the following areas:

(1) The salient theories of a variety of psychotherapeutic orientations directly related to marriage and family therapy, and marital and family systems approaches to treatment.

(2) Theories of marriage and family therapy and how they can be utilized in order to intervene therapeutically with couples, families, adults, children, and groups.

(3) Developmental issues and life events from infancy to old age and their effect upon individuals, couples, and family relationships. This may include coursework that focuses on specific family life events and the psychological, psychotherapeutic, and health implications that arise within couples and families, including, but not limited to, childbirth, child rearing, childhood, adolescence, adulthood, marriage, divorce, blended families, stepparenting, and geropsychology.

(4) A variety of approaches to the treatment of children.

The board shall, by regulation, set forth the subjects of instruction required in this subdivision.

(b) (1) In addition to the 12 semester or 18 quarter units of coursework specified above, the doctor's or master's degree program shall contain not less than six semester or nine quarter units of supervised practicum in applied psychotherapeutic techniques, assessment, diagnosis, prognosis, and treatment of premarital, couple, family, and child relationships, including dysfunctions, healthy functioning, health promotion, and illness prevention, in a supervised clinical placement that provides supervised fieldwork experience within the scope of practice of a marriage and family therapist.

(2) For applicants who enrolled in a degree program on or after January 1, 1995, the practicum shall include a minimum of 150 hours of face-to-face experience counseling individuals, couples, families, or groups.

(3) (A) Supervised practicum hours, as specified in this subdivision, shall be evaluated, accepted, and credited as hours for trainee experience by the board.

(B) The practicum hours shall be considered as part of the 48 semester or 72 quarter unit requirement.

(c) As an alternative to meeting the qualifications specified in subdivision (a), the board shall accept as equivalent degrees, those master's or doctor's degrees granted by educational institutions whose degree program is approved by the Commission on Accreditation for Marriage and Family Therapy Education.

(d) All applicants shall, in addition, complete the coursework or training specified in Section 4980.41.

(e) All applicants shall be at least 18 years of age.

(f) All applicants shall have at least two years' experience that meets the requirements of this chapter in interpersonal relationships, marriage and family therapy and psychotherapy under the supervision of a licensed marriage and family therapist, licensed clinical social worker, licensed psychologist, or a licensed physician certified in psychiatry by the American Board of Psychiatry and Neurology. Experience shall not be gained under the supervision of an individual who has provided therapeutic services to that applicant. For those supervisorial relationships in effect on or before December 31, 1988, and which remain in continuous effect thereafter, experience may be gained under the supervision of a licensed physician who has completed a residency in psychiatry. A person supervising another person pursuant to this subdivision shall have been licensed or certified for at least two years prior to acting as a supervisor, shall have a current and valid license that is not under suspension or probation, and shall meet the requirements established by regulations.

(g) The applicant shall pass a board administered written or oral examination or both types of examinations, except that an applicant who passed a written examination and who has not taken and passed an oral examination shall instead be required to take and pass a clinical vignette written examination.

(h) The applicant shall not have committed acts or crimes constituting grounds for denial of licensure under Section 480. The board shall not issue a registration or license to any person who has been convicted of a crime in this or another state or in a territory of the United States that involves sexual abuse of children or who is required to register pursuant to Section 290 of the Penal Code or the equivalent in another state or territory.

(i) (1) An applicant applying for intern registration who, prior to December 31, 1987, met the qualifications for registration, but who failed to apply or qualify for intern registration may be granted an intern registration if the applicant meets all of the following criteria:

(A) The applicant possesses a doctor's or master's degree in marriage, family, and child counseling, marital and family therapy, psychology, clinical psychology, counseling psychology, counseling with an emphasis in marriage, family, and child counseling, or social work with an emphasis in clinical social work obtained from a school, college, or university currently conferring that degree that, at the time the degree was conferred, was accredited by the Western Association of Schools and Colleges, and where the degree conferred was, at the time it was conferred, specifically intended to satisfy the educational requirements for licensure by the Board of Behavioral Sciences.

(B) The applicant's degree and the course content of the instruction underlying that degree have been evaluated by the chief academic officer of a school, college, or university accredited by the Western Association of Schools and Colleges to determine the extent to which the applicant's degree program satisfies the current educational requirements for licensure, and the chief academic officer certifies to the board the amount and type of instruction needed to meet the current requirements.

(C) The applicant completes a plan of instruction that has been approved by the board at a school, college, or university accredited by the Western Association of Schools and Colleges that the chief academic officer of the educational institution has, pursuant to subparagraph (B), certified will meet the current educational requirements when considered in conjunction with the original degree.

(2) A person applying under this subdivision shall be considered a trainee, as that term is defined in Section 4980.03, once he or she is enrolled to complete the additional coursework necessary to meet the current educational requirements for licensure.

(j) An applicant for licensure trained in an educational institution outside the United States shall demonstrate to the satisfaction of the board that he or she possesses a qualifying degree that is equivalent to a degree earned from a school, college, or university accredited by the Western Association of Schools and Colleges, or approved by the Bureau of Private Postsecondary and Vocational Education. These applicants shall provide the board with a comprehensive evaluation of the degree performed by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES), and shall provide any other documentation the board deems necessary.

SEC. 11. Section 4980.50 of the Business and Professions Code is amended to read:

4980.50. (a) Every applicant who meets the educational and experience requirements and applies for a license as a marriage and family therapist shall be examined by the board. The examinations shall be as set forth in subdivision (g) of Section 4980.40. The examinations shall be given at least twice a year at a time and place and under supervision as the board may determine. The board shall examine the candidate with regard to his or her knowledge and professional skills and his or her judgment in the utilization of appropriate techniques and methods.

(b) The board shall not deny any applicant, who has submitted a complete application for examination, admission to the licensure examinations required by this section if the applicant meets the educational and experience requirements of this chapter, and has not committed any acts or engaged in any conduct that would constitute grounds to deny licensure.

(c) The board shall not deny any applicant, whose application for licensure is complete, admission to the standard written examination, nor shall the board postpone or delay any applicant's standard written examination or delay informing the candidate of the results of the standard written examination, solely upon the receipt by the board of a complaint alleging acts or conduct that would constitute grounds to deny licensure.

(d) If an applicant for examination who has passed the standard written examination is the subject of a complaint or is under board investigation for acts or conduct that, if proven to be true, would constitute grounds for the board to deny licensure, the board shall permit the applicant to take the clinical vignette written examination for licensure, but may withhold the results of the examination or notify the applicant that licensure will not be granted pending completion of the investigation.

(e) Notwithstanding Section 135, the board may deny any applicant who has previously failed either the standard written or clinical vignette written examination permission to retake either examination pending completion of the investigation of any complaints against the applicant. Nothing in this section shall prohibit the board from denying an applicant admission to any examination, withholding the results, or refusing to issue a license to any applicant when an accusation or statement of issues has been filed against the applicant pursuant to Sections 11503 and 11504 of the Government Code, respectively, or the applicant has been denied in accordance with subdivision (b) of Section 485.

(f) Notwithstanding any other provision of law, the board may destroy all examination materials two years following the date of an examination.

(g) On or after January 1, 2002, no applicant shall be eligible to participate in a clinical vignette written examination if his or her passing score on the standard written examination occurred more than seven years before.

(h) An applicant who has qualified pursuant to this chapter shall be issued a license as a marriage and family therapist in the form that the board may deem appropriate.

SEC. 12. Section 4984.7 of the Business and Professions Code is amended to read:

4984.7. The amount of the fees prescribed by this chapter that relate to licensing of persons to engage in the business of marriage and family therapy is that established by the following schedule:

(a) The fee for applications for examination received on or after January 1, 1987, shall be one hundred dollars ($100).

(b) The fee for issuance of the initial license shall be a maximum of one hundred eighty dollars ($180).

(c) For those persons whose license expires on or after January 1, 1996, the renewal fee shall be a maximum of one hundred eighty dollars ($180).

(d) The delinquency fee shall be ninety dollars ($90). Any person who permits his or her license to become delinquent may have it restored only upon the payment of all fees that he or she would have paid if the license had not become delinquent, plus the payment of any and all outstanding delinquency fees.

(e) For those persons registering as interns on or after January 1, 1996, the registration fee shall be seventy-five dollars ($75).

(f) For those persons whose registration as an intern expires on or after January 1, 1996, the renewal fee shall be seventy-five dollars ($75).

(g) The standard written examination fee shall be one hundred dollars ($100). After successfully passing the standard written examination,

each applicant for the clinical vignette written examination shall submit one hundred dollars ($100). Applicants failing to appear for any examination, once having been scheduled, shall forfeit any examination fees paid. Effective January 1, 2005, the examination fees for the standard written and clinical vignette written examinations shall be based on the actual cost to the board of developing, purchasing, and grading of each examination, plus the actual cost to the board of administering each examination. The written examination fees shall be adjusted periodically by regulation to reflect the actual costs incurred by the board.

(h) An applicant who fails any standard or clinical vignette written examination may within one year from the notification date of that failure, retake the examination as regularly scheduled without further application upon payment of one hundred dollars ($100) for the standard written reexamination and one hundred dollars ($100) for the clinical vignette written reexamination. Thereafter, the applicant shall not be eligible for further examination until he or she files a new application, meets all current requirements, and pays all fees required. Persons failing to appear for the reexamination, once having been scheduled, shall forfeit any reexamination fees paid.

(i) The fee for rescoring any written examination shall be twenty dollars ($20).

(j) The fee for issuance of any replacement registration, license, or certificate shall be twenty dollars ($20).

(k) The fee for issuance of a certificate or letter of good standing shall be twenty-five dollars ($25).

With regard to all license, examination, and other fees, the board shall establish fee amounts at or below the maximum amounts specified in this chapter.

SEC. 13. Section 4986.21 of the Business and Professions Code is amended to read:

4986.21. (a) Only individuals who have the qualifications prescribed by the board under this chapter are eligible to take the examination. Every applicant who is issued a license as an educational psychologist shall be examined by the board.

(b) Notwithstanding any other provision of law, the board may destroy all examination materials two years following the date of an examination.

SEC. 14. Section 4986.80 of the Business and Professions Code is amended to read:

4986.80. The amount of the fees prescribed by this chapter that relate to the licensing of educational psychologists is that established by the following schedule:

(a) Persons applying for an original license after July 1, 1986, shall pay an application fee of one hundred dollars ($100).

(b) The fee for issuance of the initial license shall be a maximum of one hundred fifty dollars ($150).

(c) Persons whose license expires after January 1, 1991, shall pay a renewal fee of a maximum of one hundred fifty dollars ($150).

(d) The delinquency fee shall be seventy-five dollars ($75). A person who permits his or her license to become delinquent may have it restored only upon the payment of all fees that he or she would have paid if the license had not become delinquent, plus the payment of any and all delinquency fees.

(e) The written examination fee shall be one hundred dollars ($100). Applicants failing to appear for an examination, once having been scheduled, shall forfeit any examination fees paid.

(f) The fee for each reexamination shall be the fee for each examination specified in subdivision (e). An applicant who has failed the written examination may within one year from the notification date of failure, retake that examination as regularly scheduled without further application. Thereafter, the applicant shall not be eligible for further examination until he or she files a new application, meets all current requirements, and pays all fees required. Persons failing to appear for reexamination, once having been scheduled, shall forfeit any reexamination fees paid.

(g) The fee for rescoring a written examination shall be twenty dollars ($20).

(h) The fee for issuance of a replacement registration, license, or certificate shall be twenty dollars ($20).

(i) The fee for issuance of a certificate or letter of good standing shall be twenty-five dollars ($25).

With regard to all license, examination, and other fees, the board shall establish fee amounts at or below the maximum amounts specified in this chapter.

SEC. 15. Section 4992.1 of the Business and Professions Code is amended to read:

4992.1. (a) Only individuals who have the qualifications prescribed by the board under this chapter are eligible to take the examination.

Every applicant who is issued a clinical social worker license shall be examined by the board.

(b) Notwithstanding any other provision of law, the board may destroy all examination materials two years following the date of an examination.

On or after January 1, 2002, no applicant shall be eligible to participate in a clinical vignette written examination if his or her passing score on the standard written examination occurred more than seven years before.

SEC. 16. Section 4996.3 of the Business and Professions Code is amended to read:

4996.3. (a) Each application for the standard written examination received on or after January 1, 1999, shall be accompanied by an application fee of one hundred dollars ($100) and a fee of up to one hundred fifty dollars ($150), including the standard written examination fee and related administrative costs for the standard written examination. After successfully passing the standard written examination, each applicant shall submit one hundred dollars ($100) for the clinical vignette written examination. Applicants failing to appear for any examination, once having been scheduled, shall forfeit any examination fees paid. Effective January 1, 2005, the examination fees for the standard written and clinical vignette written examinations shall be based on the actual cost to the board of developing, purchasing, and grading of each examination, plus the actual cost to the board of administering each examination. The written examination fees shall be adjusted periodically by regulation to reflect the actual costs incurred by the board.

(b) The fee for rescoring any written examination shall be twenty dollars ($20).

(c) The fee for issuance of the initial license shall be a maximum of one hundred fifty-five dollars ($155).

(d) With regard to all license, examination, and other fees, the board shall establish fee amounts at or below the maximum amounts specified in this chapter.

SEC. 17. Section 4996.4 of the Business and Professions Code is amended to read:

4996.4. Notwithstanding Section 4996.3, an applicant who has failed any standard or clinical vignette written examination may apply for reexamination upon payment of the fee of up to one hundred fifty dollars ($150) including the examination fee and related administrative costs. An applicant who fails a standard or clinical vignette written examination may within one year from the notification date of failure, retake that examination as regularly scheduled, without further application, upon payment of the required examination fees. Thereafter, the applicant shall not be eligible for further examination until he or she files a new application, meets all current requirements, and pays all fees required. Applicants failing to appear for reexamination, once having been scheduled, shall forfeit any reexamination fees paid.

SEC. 18. Section 5081.1 of the Business and Professions Code is amended to read:

5081.1. Pursuant to subdivision (b) of Section 5090, an applicant for admission to the examination for a certified public accountant certificate may qualify for admission with one of the following:

(a) The applicant shall present satisfactory evidence that the applicant has either of the following:

(1) A baccalaureate degree from a university, college or other four-year institution of learning accredited by a regional institutional accrediting agency included in a list of these agencies published by the United States Secretary of Education under the requirements of the Higher Education Act of 1965 as amended (20 U.S.C. Sec. 1001 et seq.) with a major in accounting or related subjects requiring a minimum of 45 semester units of instruction in these subjects. If the applicant has received a baccalaureate degree in a nonaccounting major, the applicant shall present satisfactory evidence of study substantially the equivalent of an accounting major, including courses in related business administration subjects.

(2) A degree or degrees from a college, university, or other institution of learning located outside the United States that is approved by the board as the equivalent of the baccalaureate degree described in paragraph (1). The board may require an applicant under this paragraph to submit documentation of his or her education to a credential evaluation service approved by the board for evaluation and to cause the results of this evaluation to be reported to the board. The board shall adopt regulations specifying the criteria and procedures for approval of credential evaluation services. These regulations shall, at a minimum, require that the credential evaluation service (A) furnish evaluations directly to the board, (B) furnish evaluations written in English, (C) be a member of the American Association of Collegiate Registrars and Admission Officers, the National Association of Foreign Student Affairs, or the National Association of Credential Evaluation Services, (D) be used by accredited colleges and universities, (E) be reevaluated by the board every five years, (F) maintain a complete set of reference materials as specified by the board, (G) base evaluations only upon authentic, original transcripts and degrees and have a written procedure for identifying fraudulent transcripts, (H) include in the evaluation report, for each degree held by the applicant, the equivalent degree offered in the United States, the date the degree was granted, the institution granting the degree, an English translation of the course titles, and the semester unit equivalence for each of the courses, (I) have an appeal procedure for applicants, and (J) furnish the board with information concerning the credential evaluation service that includes biographical information on evaluators and translators, three letters of reference from public or private agencies, statistical information on the number of applications processed annually for the past five years, and

any additional information the board may require in order to ascertain that the credential evaluation service meets the standards set forth in this paragraph and in any regulations adopted by the board.

(b) The applicant shall present satisfactory evidence that the applicant has successfully completed a two-year course of college level study or received an associate of arts degree from a community college, either institution accredited by a regional institutional accrediting agency that is included in a list published by the United States Secretary of Education under the provisions of federal law specified in paragraph (1) of subdivision (a), and that the applicant has completed a minimum of 120 semester units which includes the study of accounting and related business administration subjects.

(c) The applicant shall show to the satisfaction of the board that he or she has had the equivalent of the educational qualifications required by subdivision (b), or shall pass a preliminary written examination approved and administered by an agency approved by the California State Department of Education and shall have completed a minimum of 10 semester units or the equivalent in accounting subjects. The 10 semester units in accounting subjects shall be completed at a college, university, or other institution of higher learning accredited at the college level by an agency or association that is included in a list published by the United States Secretary of Education under the federal law specified in paragraph (1) of subdivision (a).

(d) The applicant shall be a public accountant registered under this chapter.

(e) 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. 19. Section 5082.2 of the Business and Professions Code is amended to read:

5082.2. A candidate who fails an examination provided for in this article shall have the right to reexamination pursuant to the provisions of this article and regulations adopted by the board.

SEC. 20. Section 5083 of the Business and Professions Code is amended to read:

5083. (a) Pursuant to subdivision (b) of Section 5090, an individual applying for licensure shall meet, to the satisfaction of the board, one of the following requirements:

(1) Four years of experience if the applicant qualified to sit for the exam by meeting the requirements of subdivision (b) or (c) of Section 5081.1.

(2) Three years of experience if the applicant qualified to sit for the exam by meeting the requirements of subdivision (a) or (d) of Section 5081.1 or meets the requirements of Section 5082.3.

(b) In order to be qualifying under this section, experience shall have been performed in accordance with applicable professional standards. Experience in public accounting may be qualifying if completed by, or in the employ of, a person licensed or otherwise having comparable authority under the laws of any state or country to engage in the practice of public accountancy. Experience in private or governmental accounting or auditing employment may be qualifying provided that this work was performed under the direct supervision of an individual licensed by a state to engage in the practice of public accountancy.

(c) Qualifying experience for licensure includes providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax, or consulting skills.

(d) The board shall prescribe rules related to the experience requirements set forth in this section, including a requirement that each applicant demonstrate to the board satisfactory experience in the attest function as it relates to financial statements. For purposes of this subdivision, the attest function includes audit and review of financial statements.

(e) 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. 21. Section 5084 of the Business and Professions Code is amended to read:

5084. For applicants seeking licensure pursuant to subdivision (b) of Section 5090, the board shall grant one year's credit toward fulfillment of its public accounting experience requirement to a graduate of a college who has completed a four-year course with 45 or more semester units or the equivalent thereof in the study of accounting and related business administration subjects, of which at least 20 semester units or the equivalent thereof shall be in the study of accounting.

The members of the board shall prescribe rules establishing the character and variety of experience necessary to fulfill the experience requirements set forth in this section.

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. 22. Section 5090 of the Business and Professions Code, as added by Section 15 of Chapter 704 of the Statutes of 2001, is amended to read:

5090. (a) An applicant for the certified public accountant license shall comply with the education, examination, and experience requirements in either Section 5092 or 5093.

(b) Notwithstanding subdivision (a), an applicant who applied, qualified, and sat for at least two subjects of the examination for the

certified public accountant license before May 15, 2002, may complete the examination and qualify for licensure based on the requirements in Sections 5081.1, 5082, 5082.2, 5083, 5084, and applicable regulations adopted by the board that were in effect on December 31, 2001, or comparable examination requirements adopted by the board in the event the form or format of the examination changes, provided the applicant qualifies and applies for licensure before January 1, 2010.

SEC. 23. Section 5090 of the Business and Professions Code, as added by Section 18 of Chapter 718 of the Statutes of 2001, is repealed.

SEC. 24. Section 5092 of the Business and Professions Code, as added by Section 17 of Chapter 704 of the Statutes of 2001, is amended to read:

5092. (a) To qualify for the certified public accountant license, an applicant who is applying under this section shall meet the education, examination, and experience requirements specified in subdivisions (b), (c), and (d), or otherwise prescribed pursuant to this article. The board may adopt regulations as necessary to implement this section.

(b) An applicant for the certified public accountant license shall present satisfactory evidence that the applicant has completed a baccalaureate or higher degree conferred by a college or university, meeting, at a minimum, the standards described in Section 5094, the total educational program to include a minimum of 24 semester units in accounting subjects and 24 semester units in business related subjects. This evidence shall be provided prior to admission to the examination for the certified public accountant license, except that an applicant who applied, qualified, and sat for at least two subjects of the examination for the certified public accountant license before May 15, 2002, may provide this evidence at the time of application for licensure.

(c) An applicant for the certified public accountant license shall pass an examination prescribed by the board pursuant to this article.

(d) The applicant shall show, to the satisfaction of the board, that the applicant has had two years of qualifying experience. This experience may include providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax, or consulting skills. To be qualifying under this section, experience shall have been performed in accordance with applicable professional standards. Experience in public accounting shall be completed under the supervision or in the employ of a person licensed or otherwise having comparable authority under the laws of any state or country to engage in the practice of public accountancy. Experience in private or governmental accounting or auditing shall be completed under the supervision of an individual licensed by a state to engage in the practice of public accountancy.

SEC. 25. Section 5092 of the Business and Professions Code, as added by Section 20 of Chapter 718 of the Statutes of 2001, is repealed.

SEC. 26. Section 5093 of the Business and Professions Code, as amended by Section 18 of Chapter 704 of the Statutes of 2001, is repealed.

SEC. 27. Section 5093 of the Business and Professions Code, as amended by Section 11 of Chapter 664 of the Statutes of 2002, is amended to read:

5093. (a) To qualify for the certified public accountant license, an applicant who is applying under this section shall meet the education, examination, and experience requirements specified in subdivisions (b), (c), and (d), or otherwise prescribed pursuant to this article. The board may adopt regulations as necessary to implement this section.

(b) (1) An applicant for admission to the certified public accountant examination under the provisions of this section shall present satisfactory evidence that the applicant has completed a baccalaureate or higher degree conferred by a college or university, meeting, at a minimum, the standards described in Section 5094, the total educational program to include a minimum of 24 semester units in accounting subjects and 24 semester units in business related subjects. This evidence shall be provided at the time of application for admission to the examination, except that an applicant who applied, qualified, and sat for at least two subjects of the examination for the certified public accountant license before May 15, 2002, may provide this evidence at the time of application for licensure.

(2) An applicant for issuance of the certified public accountant license under the provisions of this section shall present satisfactory evidence that the applicant has completed at least 150 semester units of college education including a baccalaureate or higher degree conferred by a college or university, meeting, at a minimum, the standards described in Section 5094, the total educational program to include a minimum of 24 semester units in accounting subjects and 24 semester units in business related subjects. This evidence shall be presented at the time of application for the certified public accountant license.

(c) An applicant for the certified public accountant license shall pass an examination prescribed by the board.

(d) The applicant shall show, to the satisfaction of the board, that the applicant has had one year of qualifying experience. This experience may include providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax or consulting skills. To be qualifying under this section, experience shall have been performed in accordance with applicable professional standards. Experience in public accounting shall be completed under the supervision or in the employ of a person licensed

or otherwise having comparable authority under the laws of any state or country to engage in the practice of public accountancy. Experience in private or governmental accounting or auditing shall be completed under the supervision of an individual licensed by a state to engage in the practice of public accountancy.

SEC. 27.3. Section 7069 of the Business and Professions Code is amended to read:

7069. (a) An applicant, and each officer, director, partner, associate and responsible managing employee thereof, shall not have committed acts or crimes that are grounds for denial of licensure under Section 480.

(b) As part of an application for a contractor's license, the board shall require an applicant to furnish a full set of fingerprints for purposes of conducting a criminal history record check. Fingerprints furnished pursuant to this subdivision shall be submitted in an electronic format if readily available. Requests for alternative methods of furnishing fingerprints are subject to the approval of the registrar. The board shall use the fingerprints furnished by an applicant to obtain criminal history information on the applicant from the Department of Justice and the United States Federal Bureau of Investigation, and the board may obtain any subsequent arrest information that is available. This subdivision shall become operative on the date on which sufficient funds are available for the board and the Department of Justice to conduct a criminal history record check pursuant to this subdivision or on July 1, 2005, whichever occurs first.

SEC. 27.5. Section 7153.1 of the Business and Professions Code is amended to read:

7153.1. (a) The home improvement salesperson shall submit to the registrar an application in writing containing the statement that he or she desires the issuance of a registration under the terms of this article.

The application shall be made on a form prescribed by the registrar and shall be accompanied by the fee fixed by this chapter.

(b) The registrar may refuse to register the applicant under the grounds specified in Section 480.

(c) As part of an application for a home improvement salesperson, the board shall require an applicant to furnish a full set of fingerprints for purposes of conducting criminal history record checks. Fingerprints furnished pursuant to this subdivision shall be submitted in an electronic format where readily available. Requests for alternative methods of furnishing fingerprints are subject to the approval of the registrar. The board shall use the fingerprints furnished by an applicant to obtain criminal history information on the applicant from the Department of Justice and the United States Federal Bureau of Investigation, including any subsequent arrest information available. This subdivision shall become operative on the date on which sufficient funds are available to

the board and the Department of Justice to conduct a criminal history record check pursuant to this subdivision or on July 1, 2005, whichever occurs first.

SEC. 28. Section 7303.2 of the Business and Professions Code is amended to read:

7303.2. The board shall conduct the following studies and reviews, and shall report its findings and recommendations to the department and the Joint Committee on Boards, Commissions, and Consumer Protection no later than September 1, 2005:

(a) The board, pursuant to Section 139 and in conjunction with the Office of Examination Resources of the department, shall review the 1600 hour training requirement for cosmetologists.

(b) The board, in conjunction with the Office of Examination Resources of the department, shall evaluate the equivalency of the national exam.

(c) The board shall conduct a study to assess the costs and benefits associated with requiring all applicants to submit fingerprint cards for background investigations.

(d) The board, in coordination with the Department of Industrial Relations, shall review all components of the apprenticeship program, including, but not limited to, the following:

(1) Apprenticeship curriculum requirements.

(2) The standards for the preapprentice trainers, program sponsors, trainers, and placement establishments. The board shall pay particular attention to ways to eliminate duplicative regulations.

(e) The board shall review all components of the externship program. In addition to structural changes, the board shall address the following:

(1) Whether the program should be eliminated.

(2) Whether the program should be available to all students, not just cosmetology students attending private schools.

(3) Whether the students should be paid.

(f) The board shall assess the costs and benefits associated with same day licensing. If the board determines that the benefits of same day licensing outweigh the costs, the board shall immediately plan and implement safety measures to protect site staff and undispersed licenses.

(g) The board, in conjunction with the Office of Examination Resources of the department, shall assess the validity of aggregate scoring for board applicants.

SEC. 29. Section 7583.6 of the Business and Professions Code is amended to read:

7583.6. (a) A person entering the employ of a licensee to perform the functions of a security guard or a security patrolperson shall complete a course in the exercise of the power to arrest prior to being assigned to a duty location.

(b) Except for a registrant who has completed the course of training required by Section 7583.45, a person registered pursuant to this chapter shall complete not less than 32 hours of training in security officer skills within six months from the date the registration card is issued. Sixteen of the 32 hours shall be completed within 30 days from the date the registration card is issued.

(c) A course provider shall issue a certificate to a security guard upon satisfactory completion of a required course, conducted in accordance with the department's requirements. A private patrol operator may provide training programs and courses in addition to the training required in this section. A registrant who is unable to provide his or her employing licensee the certificate of satisfactory completion required by this subdivision shall complete 16 hours of the training required by subdivision (b) within 30 days of the date of his employment and shall complete the 16 remaining hours within six months of his or her employment date.

(d) The department shall develop and approve by regulation a standard course and curriculum for the skills training required by subdivision (b) to promote and protect the safety of persons and the security of property. For this purpose, the department shall consult with consumers, labor organizations representing private security officers, private patrol operators, educators, and subject matter experts.

(e) The course of training required by subdivision (b) may be administered, tested, and certified by any licensee, or by any organization or school approved by the department. The department may approve any person or school to teach the course.

(f) (1) On and after January 1, 2005, a licensee shall annually provide each employee registered pursuant to this chapter with eight hours of specifically dedicated review or practice of security officer skills prescribed in either course required in Section 7583.6 or 7583.7.

(2) A licensee shall maintain at the principal place of business or branch office a record verifying completion of the review or practice training for a period of not less than two years. The records shall be available for inspection by the bureau upon request.

(g) This section does not apply to a peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code who has successfully completed a course of study in the exercise of the power to arrest approved by the Commission on Peace Officer Standards and Training. This section does not apply to armored vehicle guards.

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

SEC. 30. Section 94779.1 of the Education Code is amended to read:

94779.1. (a) The bureau shall work together with the staff of the Joint Committee on Boards, Commissions, and Consumer Protection,

along with representatives of regulated institutions, the California Postsecondary Education Commission, the California Student Aid Commission, students, and other interested parties to revise this chapter to streamline its provisions and eliminate contradictions, redundancies, ambiguities, conflicting provisions, and unnecessary provisions, including consideration of having accreditation by the United States Department of Education approved regional accrediting bodies replace some of the bureau's approval requirements of degree-granting institutions, educational programs, and instructors. In addition, the bureau, in conjunction with these various entities, shall evaluate the provisions of this chapter to determine what additional changes are advisable to improve the effectiveness of the state's regulation of private postsecondary and vocational education, including, but not limited to, the need to regulate out-of-state postsecondary institutions that offer educational programs to California students via the Internet and the feasibility of that regulation, and the type and timeliness of information required to be provided to the bureau.

(b) The bureau shall objectively assess the cost of meeting its statutory obligations, determine the staffing necessary to meet those obligations, determine whether the current fee structure allows for collection of revenue sufficient to support the necessary staffing, and report that information to the Director of Consumer Affairs and the Joint Committee on Boards, Commissions, and Consumer Protection by March 1, 2005.

(c) The bureau shall continue to make additional improvements to its data collection and dissemination systems so that it will provide improved reporting of information regarding the private postsecondary and vocational education sector, and improved monitoring of reports, initial and renewal applications, complaint and enforcement records, and collection of fees among other information necessary to serve the bureau's wide-ranging data management needs effectively.

SEC. 31. Section 12231 of the Government Code is amended to read:

12231. (a) In carrying out the provisions of this article, the Secretary of State shall consult with and give consideration to the recommendations of the California Heritage Preservation Commission, which for such purpose shall serve in an advisory capacity to the Secretary of State.

(b) This section shall become inoperative on July 1, 2006, and, as of January 1, 2007, is repealed, unless a later enacted statute that is enacted before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 32. Section 14999 of the Government Code is amended to read:

14999. The Commission for Economic Development, hereinafter referred to as the commission, is continued in existence. The purpose of the commission is to provide continuing bipartisan legislative, executive branch and private sector support and guidance for the best possible overall economic development of the state by any and all of the following means:

(a) Assessing specific regional or local economic development problems and making recommendations for solving problems.

(b) Providing a forum for ongoing dialogue on economic issues between state government and the private sector.

(c) Recommending, where deemed appropriate, legislation to require evaluation of demonstration and ongoing economic development projects and programs to ensure continued cost effectiveness.

(d) Identifying and reporting important secondary effects on economic development of programs and regulations which may have other primary purposes.

(e) Undertaking specialized studies and preparing specialized reports at the request of the Governor or Legislature.

This section shall become inoperative on July 1, 2006, and, as of January 1, 2007, is repealed, unless a later enacted statute that is enacted before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 33. Section 80.2 of the Harbors and Navigation Code is amended to read:

80.2. The commission shall be composed of seven members appointed by the Governor, with the advice and consent of the Senate. The members shall have experience and background consistent with the functions of the commission. In making appointments to the commission, the Governor shall give primary consideration to geographical location of the residence of members as related to boating activities and harbors. In addition to geographical considerations, the members of the commission shall be appointed with regard to their special interests in recreational boating. At least one of the members shall be a member of a recognized statewide organization representing recreational boaters. One member of the commission shall be a private small craft harbor owner and operator. One member of the commission shall be an officer or employee of a law enforcement agency responsible for enforcing boating laws. The first vacancy occurring on the commission on and after January 1, 1997, shall be filled by such an officer or employee.

The Governor shall appoint the first seven members of the commission for the following terms to expire on January 15: one member for one year, two members for two years, two members for three years, and two members for four years. Thereafter, appointments shall

be for a four-year term. Vacancies occurring prior to the expiration of the term shall be filled by appointment for the unexpired term.

This section shall become inoperative on July 1, 2006, and, as of January 1, 2007, is repealed, unless a later enacted statute that is enacted before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 34. Section 5090.15 of the Public Resources Code is amended to read:

5090.15. (a) There is in the department the Off-Highway Motor Vehicle Recreation Commission, consisting of seven members, three of whom shall be appointed by the Governor, two of whom shall be appointed by the Senate Committee on Rules, and two of whom shall be appointed by the Speaker of the Assembly.

(b) In order to be appointed to the commission, a nominee shall represent one or more of the following groups:

(1) Off-highway vehicle recreation interests.

(2) Biological or soil scientists.

(3) Groups or associations of predominantly rural landowners.

(4) Law enforcement.

(5) Environmental protection organizations.

(6) Nonmotorized recreationist interests.

It is the intent of the Legislature that appointees to the commission represent all of the groups delineated in paragraphs (1) to (6), inclusive, to the extent possible.

(c) Whenever any reference is made to the State Park and Recreation Commission pertaining to a duty, power, purpose, responsibility, or jurisdiction of the State Park and Recreation Commission with respect to the state vehicular recreation areas, as established by this chapter, it shall be deemed to be a reference to, and to mean, the Off-Highway Motor Vehicle Recreation Commission.

(d) Based on the findings in the 2004 Off-Highway Vehicle Fuel Tax Study, the division shall, not later than January 1, 2005, prepare and submit to the Legislature a report that identifies the principal reasons why people are using off-road trails, as a means of assisting in the determination of how fuel tax funds should be expended.

(e) This section shall become inoperative on July 1, 2006, and, as of January 1, 2007, is repealed, unless a later enacted statute that is enacted before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 35. Section 5090.15 of the Public Resources Code is amended to read:

5090.15. (a) There is in the department the Off-Highway Motor Vehicle Recreation Commission, consisting of seven members, three of whom shall be appointed by the Governor, two of whom shall be

appointed by the Senate Committee on Rules, and two of whom shall be appointed by the Speaker of the Assembly.

(b) In order to be appointed to the commission, a nominee shall represent one or more of the following groups:

(1) Off-highway vehicle recreation interests.

(2) Biological or soil scientists.

(3) Groups or associations of predominantly rural landowners.

(4) Law enforcement.

(5) Environmental protection organizations.

(6) Nonmotorized recreationist interests.

It is the intent of the Legislature that appointees to the commission represent all of the groups delineated in paragraphs (1) to (6), inclusive, to the extent possible.

(c) Whenever any reference is made to the State Park and Recreation Commission pertaining to a duty, power, purpose, responsibility, or jurisdiction of the State Park and Recreation Commission with respect to the state vehicular recreation areas, as established by this chapter, it shall be deemed to be a reference to, and to mean, the Off-Highway Motor Vehicle Recreation Commission.

(d) Based on the findings in the 2004 Off-Highway Vehicle Fuel Tax Study, the division shall, not later than January 1, 2005, prepare and submit to the Legislature a report that identifies the principal reasons why people are using off-road trails and facilities, and an estimate of the proportional amount of off-highway motor vehicle use by jurisdiction, as a means of assisting in the determination of how fuel tax and in lieu of property tax funds should be expended.

(e) This section shall become inoperative on July 1, 2006, and, as of January 1, 2007, is repealed, unless a later enacted statute that is enacted before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 36. Section 35 of this bill incorporates amendments to Section 5090.15 of the Public Resources Code proposed by both this bill and AB 2666. 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 5090.15 of the Public Resources Code, and (3) this bill is enacted after AB 2666, in which case Section 34 of this bill shall not become operative.

SEC. 37. 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. 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 that the provisions of this act may be implemented at the earliest possible time, it is necessary for this act to take effect immediately.

CHAPTER 910

An act to amend, repeal, and add Section 52124 of the Education Code, relating to class size, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 2004.]

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

SECTION 1. Section 52124 of the Education Code is amended to read:

52124. (a) A school district that implements a class size reduction program pursuant to this chapter is subject to this section.

(b) A school district may establish a program to reduce class size in kindergarten and grades 1 to 3, inclusive, and that program shall be implemented at each schoolsite according to the following priorities:

(1) If only one grade level is reduced at a schoolsite, the grade level shall be grade 1.

(2) If only two grade levels are reduced at a schoolsite, the grade levels shall be grades 1 and 2.

(3) If three grade levels are reduced at a schoolsite, then those grade levels shall be kindergarten and grades 1 and 2 or grades 1 to 3, inclusive. Priority shall be given to the reduction of class sizes in grades 1 and 2 before the class sizes of kindergarten or grade 3 are reduced.

(4) If four grade levels are reduced at a schoolsite, then those grade levels shall be kindergarten and grades 1 to 3, inclusive. First priority shall be given to the reduction of class sizes in grades 1 and 2, second priority shall be given to the reduction of class size in kindergarten and grade 3. This paragraph shall be operative only in those fiscal years for which funds are appropriated expressly for the purposes of this paragraph.

(c) It is the intent of the Legislature to continue to permit the use of combination classes of more than one grade level to the extent that school districts are otherwise permitted to use that instructional strategy. However, any school district that uses a combination class in any class

for which funding is received pursuant to this chapter may not claim funding pursuant to this chapter if the total number of pupils in the combination class, regardless of grade level, exceeds 20 pupils per certificated teacher assigned to provide direct instructional services.

(d) The governing board of a school district shall certify to the Superintendent of Public Instruction that it has met the requirements of this section in implementing its class size reduction program. If a school district receives funding pursuant to this chapter but has not implemented its class size reduction program for all grades and classes for which it received funding pursuant to this chapter, the Superintendent of Public Instruction shall notify the Controller and the school district in writing and the Controller shall deduct an amount equal to the amount received by the school district under this chapter for each class that the school district failed to reduce to a class size of 20 or less pupils from the next principal apportionment or apportionments of state funds to the district, other than basic aid apportionments required by Section 6 of Article IX of the California Constitution.

(e) Except for a school district participating pursuant to subdivision (h) of Section 52122, the amount deducted pursuant to subdivision (d) shall be adjusted as follows:

(1) Twenty percent of the amount to which the district would otherwise be eligible for each class for which the annual enrollment determined pursuant to Section 52124.5 is greater than or equal to 20.5 but less than 21.0.

(2) Forty percent of the amount to which the district would otherwise be eligible for each class for which the annual average enrollment determined pursuant to Section 52124.5 is greater than or equal to 21.0 but less than 21.5.

(3) Eighty percent of the amount to which the district would otherwise be eligible for each class for which the annual average enrollment determined pursuant to Section 52124.5 is greater than or equal to 21.5 but less than 21.9.

(4) The amount deducted pursuant to subdivision (d) for each class for which the annual average enrollment determined pursuant to 52141.5 is greater than or equal to 21.9 shall be the amount of funding the district received for the class pursuant to this chapter.

(f) Notwithstanding any other provision of this chapter, a school district located in the County of Los Angeles, Riverside, San Bernardino, San Diego, or Ventura may claim funding pursuant to this chapter for the 2003–04 school year based on enrollment counts before the October 2003 fires, in classes for which the class size reduction program is implemented if the following criteria are met:

(1) The school district submits to the Superintendent of Public Instruction a ‘‘Request for Allowance of Attendance because of

Emergency Conditions'' pursuant to Section 46392 and the emergency conditions were caused by the October 2003 fires.

(2) The school district certifies that it suffered a loss of enrollment in classes in which the class size reduction program is implemented and this loss of enrollment is due to the October 2003 fires and would result in a decrease in funding that the district receives pursuant to this chapter.

(g) This section shall be operative until July 1, 2009, and as of January 1, 2010, is repealed, unless a later enacted statute deletes or extend that date.

SEC. 2. Section 52124 is added to the Education Code, to read:

52124. (a) Any school district that implements a class size reduction program pursuant to this chapter is subject to this section.

(b) A school district may establish a program to reduce class size in kindergarten and grades 1 to 3, inclusive, and that program shall be implemented at each schoolsite according to the following priorities:

(1) If only one grade level is reduced at a schoolsite, the grade level shall be grade 1.

(2) If only two grade levels are reduced at a schoolsite, the grade levels shall be grades 1 and 2.

(3) If three grade levels are reduced at a schoolsite, then those grade levels shall be kindergarten and grades 1 and 2 or grades 1 to 3, inclusive. Priority shall be given to the reduction of class sizes in grades 1 and 2 before the class sizes of kindergarten or grade 3 are reduced.

(4) If four grade levels are reduced at a schoolsite, then those grade levels shall be kindergarten and grades 1 to 3, inclusive. First priority shall be given to the reduction of class sizes in grades 1 and 2, second priority shall be given to the reduction of class size in kindergarten and grade 3. This paragraph shall be operative only in those fiscal years for which funds are appropriated expressly for the purposes of this paragraph.

(c) It is the intent of the Legislature to continue to permit the use of combination classes of more than one grade level to the extent that school districts are otherwise permitted to use that instructional strategy. However, any school district that uses a combination class in any class for which funding is received pursuant to this chapter may not claim funding pursuant to this chapter if the total number of pupils in the combination class, regardless of grade level, exceeds 20 pupils per certificated teacher assigned to provide direct instructional services.

(d) The governing board of a school district shall certify to the Superintendent of Public Instruction that it has met the requirements of this section in implementing its class size reduction program.

If a school district receives funding pursuant to this chapter but has not implemented its class size reduction program for all grades and classes for which it received funding pursuant to this chapter, the Superintendent

of Public Instruction shall notify the Controller and the school district in writing and the Controller shall deduct an amount equal to the amount received by the school district under this chapter for each class that the school district failed to reduce to a class size of 20 or less pupils from the school district's next principal apportionment or apportionments of state funds to the district, other than basic aid apportionments required by Section 6 of Article IX of the California Constitution.

(e) This section is operative on and after July 1, 2009.

SEC. 3. The Legislature finds and declares that due to unique circumstances relating to the Counties of Los Angeles, Riverside, San Bernardino, San Diego, and Ventura, a general statute cannot be made applicable within the meaning of Section 16 of Article IV 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:

To provide much needed flexibility to school districts currently deciding whether to end participation in the Class Size Reduction Program, and to timely provide essential relief to school districts in the Counties of Los Angeles, Riverside, San Bernardino, San Diego, and Ventura that may receive a loss of state funding as a result of the fires that occurred in California during October of 2003, it is necessary that this bill take effect immediately.

CHAPTER 911

An act to amend Sections 22121, 22134.5, 22720, 24203.5, and 24203.6 of the Education Code, relating to state teachers' retirement, and making an appropriation therefor.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 2004.]

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

SECTION 1. Section 22121 of the Education Code is amended to read:

22121. (a) ''Credited service'' means service for which the required contributions have been paid.

(b) ''Credited service'' for the limited purpose of determining eligibilty for benefits pursuant to Section 22134.5, 24203.5, or 24203.6

also includes up to two-tenths of one year of service granted pursuant to Section 22717.

SEC. 2. Section 22134.5 of the Education Code is amended to read:

22134.5. (a) Notwithstanding Section 22134, ''final compensation'' means the highest average annual compensation earnable by a member during any period of 12 consecutive months while an active member of the Defined Benefit Program or time during which he or she was not a member but for which the member has received credit under the Defined Benefit Program, except time that was so credited for service performed outside this state prior to July 1, 1944. The last consecutive 12-month period of employment shall be used by the system in determining final compensation unless designated to the contrary in writing by the member.

(b) For purposes of this section, periods of service separated by breaks in service may be aggregated to constitute a period of 12 consecutive months, if the periods of service are consecutive except for the breaks.

(c) The determination of final compensation of a member who has concurrent membership in another retirement system pursuant to Section 22115.2 shall take into consideration the compensation earnable while a member of the other system, provided that all of the following exist:

(1) The member was in state service or in the employment of a local school district or a county superintendent of schools.

(2) Service under the other system was not performed during the same pay period with service under the Defined Benefit Program.

(3) Retirement under the Defined Benefit Program is concurrent with the member's retirement under the other system.

(d) If a member has received service credit for part-time service performed prior to July 1, 1956, the member's final compensation shall be adjusted for that service in excess of one year by the ratio that part-time service bears to full-time service.

(e) The board may specify a different final compensation with respect to disability allowances, disability retirement allowances, family allowances, and children's portions of survivor benefit allowances payable on and after January 1, 1978. The compensation earnable for periods of part-time service shall be adjusted by the ratio that part-time service bears to full-time service.

(f) This section shall apply to the following:

(1) A member who has 25 or more years of credited service, excluding service credited pursuant to the following:

(A) Section 22714.

(B) Section 22714.5.

(C) Section 22715.

(D) Section 22717, except as provided in subdivision (b) of Section 22121.

(E) Section 22826.

(2) A nonmember spouse, if the member had 25 or more years of credited service, as calculated in paragraph (1), on the date the parties separated, as established in the judgment or court order pursuant to Section 22652.

SEC. 3. Section 22720 of the Education Code is amended to read:

22720. The service credited pursuant to Section 22717 may not be used in the determination of final compensation, except as provided in Section 22134.5.

SEC. 4. Section 24203.5 of the Education Code is amended to read:

24203.5. (a) The percentage of final compensation used to compute the allowance pursuant to Section 24202.5, 24203, or 24205 of a member retiring on or after January 1, 1999, who has 30 or more years of credited service, shall be increased by two-tenths of 1 percentage point, provided that the sum of the percentage of final compensation used to compute the allowance, including any adjustments for retiring before the normal retirement age, and the additional percentage provided by this section does not exceed 2.40 percent.

(b) For purposes of establishing eligibility for the increased allowance pursuant to this section only, credited service shall exclude service credited pursuant to the following:

(1) Section 22714.

(2) Section 22714.5.

(3) Section 22715.

(4) Section 22717, except as provided in subdivision (b) of Section 22121.

(5) Section 22717.5.

(c) For purposes of establishing eligibility for the increased allowance pursuant to this section only, credited service shall include credited service that a court has ordered be awarded to a nonmember spouse pursuant to Section 22652. A nonmember spouse shall also be eligible for the increased allowance pursuant to this section if the member had 30 or more years of credited service on the date the parties separated, as established in the judgment or court order pursuant to Section 22652.

(d) Nonqualified service credit for which contributions pursuant to Section 22826 were made in a lump sum on or after January 1, 2000, or for which the first installment was made on or after January 1, 2000, may not be included in determining the eligibility for an increased allowance pursuant to this section.

SEC. 5. Section 24203.6 of the Education Code is amended to read:

24203.6. (a) In addition to the amount otherwise payable pursuant to Sections 24202.5, 24203, 24203.5, 24205, 24209, 24209.3, 24210, 24211, and 24212, a member shall receive an increase in the monthly allowance, prior to any modification pursuant to Sections 24300 and 24309, in the amount identified in subdivision (b), if the member meets all of the following criteria:

(1) The member retires for service on or after January 1, 2001.

(2) Prior to January 1, 2011, the member has 30 or more years of credited service, including any credited service that a court has ordered be awarded to a nonmember spouse pursuant to Section 22652, but excluding service credited pursuant to the following:

(A) Section 22714.

(B) Section 22714.5.

(C) Section 22715.

(D) Section 22717, except as provided in subdivision (b) of Section 22121.

(E) Section 22717.5.

(F) Section 22826.

(3) The member is receiving an allowance subject to Section 24203.5.

(b) The amount of the increase in the monthly allowance shall be based on the member's years of credited service at the time of retirement as follows:

30 years of credited service	$200
31 years of credited service	$300
32 or more years of credited service	$400

(c) This section also applies to a nonmember spouse, if all of the following conditions are satisfied:

(1) The member is eligible for the allowance increase pursuant to subdivisions (a) and (b) upon his or her retirement for service.

(2) On the date the parties separated, as established in the judgment or court order pursuant to Section 22652, the member had at least 30 years of credited service, excluding service credited pursuant to the following:

(A) Section 22714.

(B) Section 22714.5.

(C) Section 22715.

(D) Section 22717, except as provided in subdivision (b) of Section 22121.

(E) Section 22717.5.

(F) Section 22826.

(3) The service credit of the member was divided into separate accounts in the name of the member and the nonmember spouse by a

court pursuant to Section 22652. The amount identified in the schedule in subdivision (b) and payable pursuant to this section, that is based on the service credited during the marriage, shall be divided and paid to the member and the nonmember spouse proportionately according to the respective percentages of the member's service credit that were allocated to the member and the nonmember spouse in the court's order.

(d) The allowance increase provided under this section is not subject to Sections 24415 and 24417, but is subject to Section 22140.

SEC. 6. The sum of one hundred twenty-four thousand dollars ($124,000) is hereby appropriated from the Teachers' Retirement Fund to the Teachers' Retirement Board to modify the State Teachers' Retirement System's database to properly credit accounts of members of the Defined Benefit Program.

CHAPTER 912

An act to amend Sections 22134, 22134.5, 22135, 22171, 22650, 22651, 22661, 22663, 22705.5, 22714, 23203, 23300, 23812, 24114, 24203.6, 24204, 24209.3, 24211, 24212, 24213, 24214, 25000.9, 25100, 25107, 26004, 26140, 27400, 27401, 27406, and 44987 of, and to add Sections 22007.5 and 26002.5 to, the Education Code, relating to state teachers' retirement.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 2004.]

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

SECTION 1. Section 22007.5 is added to the Education Code, to read:

22007.5. Except as excluded by Sections 22661 and 23812, any reference to a ''spouse'' in this part includes a person who is the registered domestic partner of a member, as established pursuant to Section 297 or 299.2 of the Family Code.

SEC. 2. Section 22134 of the Education Code is amended to read:

22134. (a) ''Final compensation'' means the highest average annual compensation earnable by a member during any period of three consecutive school years while an active member of the Defined Benefit Program or time during which he or she was not a member but for which the member has received credit under the Defined Benefit Program, except time that was so credited for service performed outside this state prior to July 1, 1944. The last three consecutive years of employment

shall be used by the system in determining final compensation unless designated to the contrary in writing by the member.

(b) For purposes of this section, periods of service separated by breaks in service may be aggregated to constitute a period of three consecutive years, if the periods of service are consecutive except for the breaks.

(c) The determination of final compensation of a member who has concurrent membership in another retirement system pursuant to Section 22115.2 shall take into consideration the compensation earnable while a member of the other system, provided that all of the following exist:

(1) The member was in state service or in the employment of a local school district or a county superintendent of schools.

(2) Service under the other system was not performed during the same pay period with service under the Defined Benefit Program.

(3) Retirement under the Defined Benefit Program is concurrent with the member's retirement under the other system.

(d) The compensation earnable for the first position in which California service was credited shall be used when additional compensation earnable is required to accumulate three consecutive years for the purpose of determining final compensation under Section 23805.

(e) If a member has received service credit for part-time service performed prior to July 1, 1956, the member's final compensation shall be adjusted for that service in excess of one year by the ratio that part-time service bears to full-time service.

(f) The board may specify a different final compensation with respect to disability allowances, disability retirement allowances, family allowances, and children's portions of survivor benefit allowances payable on and after January 1, 1978. The compensation earnable for periods of part-time service shall be adjusted by the ratio that part-time service bears to full-time service.

(g) The amendment of former Section 22127 made by Chapter 782 of the Statutes of 1982 does not constitute a change in, but is declaratory of, the existing law.

SEC. 3. Section 22134.5 of the Education Code is amended to read:

22134.5. (a) Notwithstanding Section 22134, ''final compensation'' means the highest average annual compensation earnable by a member during any period of 12 consecutive months while an active member of the Defined Benefit Program or time during which he or she was not a member but for which the member has received credit under the Defined Benefit Program, except time that was so credited for service performed outside this state prior to July 1, 1944. The last consecutive 12-month period of employment shall be used by the system

in determining final compensation unless designated to the contrary in writing by the member.

(b) For purposes of this section, periods of service separated by breaks in service may be aggregated to constitute a period of 12 consecutive months, if the periods of service are consecutive except for the breaks.

(c) The determination of final compensation of a member who has concurrent membership in another retirement system pursuant to Section 22115.2 shall take into consideration the compensation earnable while a member of the other system, provided that all of the following exist:

(1) The member was in state service or in the employment of a local school district or a county superintendent of schools.

(2) Service under the other system was not performed during the same pay period with service under the Defined Benefit Program.

(3) Retirement under the Defined Benefit Program is concurrent with the member's retirement under the other system.

(d) If a member has received service credit for part-time service performed prior to July 1, 1956, the member's final compensation shall be adjusted for that service in excess of one year by the ratio that part-time service bears to full-time service.

(e) The board may specify a different final compensation with respect to disability allowances, disability retirement allowances, family allowances, and children's portions of survivor benefit allowances payable on and after January 1, 1978. The compensation earnable for periods of part-time service shall be adjusted by the ratio that part-time service bears to full-time service.

(f) This section shall only apply to a member who has 25 or more years of credited service, excluding service credited pursuant to Section 22714, 22714.5, 22715, 22717, or 22826, but including any credited service that a court has ordered be awarded to a nonmember spouse pursuant to Section 22652. This section also shall apply to a nonmember spouse, if the member had at least 25 years of credited service, excluding service credited pursuant to Section 22714, 22714.5, 22715, 22717, or 22826, on the date the parties separated, as established in the judgment or court order pursuant to Section 22652.

SEC. 4. Section 22135 of the Education Code is amended to read:

22135. (a) Notwithstanding subdivisions (a) and (b) of Section 22134, ''final compensation'' means the highest average annual compensation earnable by an active member who is a classroom teacher who retires, becomes disabled, or dies, after June 30, 1990, during any period of 12 consecutive months during his or her membership in the plan's Defined Benefit Program. The last 12 consecutive months of employment shall be used by the system in determining final

compensation unless designated to the contrary in writing by the member.

(b) Section 22134, except subdivision (a) of that section, shall apply to classroom teachers who retire after June 30, 1990, and any statutory reference to Section 22134 or ''final compensation'' with respect to a classroom teacher who retires, becomes disabled, or dies, after June 30, 1990, shall be deemed to be a reference to this section.

(c) As used in this section, ''classroom teacher'' means any of the following:

(1) All teachers and substitute teachers in positions requiring certification qualifications who spend, during the last 10 years of their employment with the same employer which immediately precedes their retirement, 60 percent or more of their contract time each year providing direct instruction. For the purpose of determining continuity of employment within the meaning of this subdivision, an authorized leave of absence for sabbatical or illness or other collectively bargained or employer-approved leaves shall not constitute a break in service.

(2) Other certificated personnel who spend, during the last 10 years of their employment with the same employer that immediately precedes their retirement, 60 percent or more of their contract time each year providing direct services to pupils, including, but not limited to, librarians, counselors, nurses, speech therapists, resource specialists, audiologists, audiometrists, hygienists, optometrists, psychologists, driver safety instructors, and personnel on special assignment to perform school attendance and adjustment services.

(d) As used in this section, ''classroom teacher'' does not include any of the following:

(1) Certificated employees whose job descriptions require an administrative credential.

(2) Certificated employees whose job descriptions include responsibility for supervision of certificated staff.

(3) Certificated employees who serve as advisers, coordinators, consultants, or developers or planners of curricula, instructional materials, or programs, who spend, during the last 10 years of their employment with the same employer that immediately precedes their retirement, less than 60 percent of their contract time in direct instruction.

(4) Certificated employees whose job descriptions require provision of direct instruction or services, but who are functioning in nonteaching assignments.

(5) Classified employees.

(e) This section shall apply only to teachers employed by an employer that has, pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, entered into a written

agreement with an exclusive representative, that makes this section applicable to all of its classroom teachers, as defined in subdivision (c).

(f) The written agreement shall include a mechanism to pay for all increases in allowances provided for by this section through employer contributions or employee contributions or both, which shall be collected and retained by the employer in a trust fund to be used solely and exclusively to pay the system for all increases in allowances provided by this section and related administrative costs; and a mechanism for disposition of the employee's contributions if employment is terminated before retirement, and for the establishment of a trust fund board. The trust fund board shall administer the trust fund and shall be composed of an equal number of members representing classroom teachers chosen by the bargaining agent and the employer. If the employer agrees to pay the total cost of increases in allowances, the establishment of a trust fund and a trust fund board shall be optional to the employer. The employer, within 30 days of receiving an invoice from the system, shall reimburse the retirement fund the amount determined by the Teachers' Retirement Board to be the actuarial equivalent of the difference between the allowance the member or beneficiary receives pursuant to this section and the allowance the member or beneficiary would have received if the member's final compensation had been computed under Section 22134 and the proportionate share of the cost to the plan's Defined Benefit Program, as determined by the Teachers' Retirement Board, of administering this section. The payment shall include the cost of all increases in allowances provided for by this section for all years of service credited to the member as of the benefit effective date. Interest shall be charged at the regular interest rate for any payment not received within 30 days of receipt of the invoice. Payments not received within 30 days after receipt of the invoice may be collected pursuant to Section 23007.

(g) Upon the execution of the agreement, the employer shall notify all certificated employees of the agreement and any certificated employee of the employer, who is a member of the Public Employees' Retirement System pursuant to Section 22508, that he or she may, within 60 days following the date of notification, elect to terminate his or her membership in the Public Employees' Retirement System and become a member of this plan's Defined Benefit Program. However, only service credited under the Defined Benefit Program subsequent to the date of that election shall be subject to this section.

(h) An employer that agrees to become subject to this section, shall, on a form and within the timeframes prescribed by the system, certify the applicability of this section to a member pursuant to the criteria set forth in this section when a retirement, disability, or family allowance becomes payable.

(i) For a nonmember spouse, final compensation shall be determined pursuant to paragraph (2) of subdivision (c) of Section 22664. The employer, within 30 days of receiving an invoice from the system, shall reimburse the retirement fund pursuant to subdivision (f). Interest shall be charged at the regular interest rate for payments not received within the prescribed timeframe. Payments not received within 30 days of invoicing may be collected pursuant to Section 23007.

SEC. 5. Section 22171 of the Education Code is amended to read:

22171. (a) ''Spouse'' means a person who was continuously married to the member for the period beginning at least 12 months prior to the death of the member, unless a child is born to the member and his or her spouse within the 12-month period or unless the spouse is carrying the member's unborn child.

(b) ''Spouse'' also means a person who was married to the member for less than 12 months, if the member's death was either accidental, or due to an illness, and the marriage took place prior to the occurrence of the injury or diagnosis of the illness that resulted in death.

(1) A member's death is defined as accidental only if he or she received bodily injuries through violent, external, or accidental means and died as a direct result of the bodily injuries and independent of all other causes.

(2) This subdivision does not apply if, at the time of the marriage, the member could not have reasonably been expected to live for 12 months.

(c) Except as excluded by Sections 22661 and 23812, ''spouse'' shall also include a person who is the registered domestic partner of a member, as established pursuant to Section 297 or 299.2 of the Family Code.

SEC. 6. Section 22650 of the Education Code is amended to read:

22650. (a) This chapter establishes the power of a court in a dissolution of marriage or legal separation action with respect to community property rights in accounts with the plan under this part and establishes and defines the rights of nonmember spouses and nonmember registered domestic partners in the plan under this part.

(b) For purposes of this chapter, any reference to ''dissolution of marriage or legal separation'' includes the termination or dissolution of a domestic partnership, nullity of a domestic partnership, or the legal separation of partners in a domestic partnership, as provided in Section 299 of the Family Code.

SEC. 7. Section 22651 of the Education Code is amended to read:

22651. (a) For purposes of this chapter and Section 23300, ''nonmember spouse'' means a member's spouse or former spouse, and also includes a member's registered domestic partner or former registered domestic partner, who is being or has been awarded a community property interest in the service credit, accumulated

retirement contributions, accumulated Defined Benefit Supplement account balance, or benefits of the member under this part.

(b) A nonmember spouse shall not be considered a member based upon his or her receipt of any of the following being awarded to the nonmember spouse as a result of legal separation or dissolution of marriage: a separate account of service credit and accumulated retirement contributions, a retirement allowance, or an interest in the member's retirement allowance under the Defined Benefit Program; or a separate account based on the member's Defined Benefit Supplement account balance, a retirement benefit, or an interest in the member's retirement benefit under the Defined Benefit Supplement Program.

SEC. 8. Section 22661 of the Education Code is amended to read:

22661. (a) The nonmember spouse who is awarded a separate account under this part shall have the right to a refund of the accumulated retirement contributions in the account under the Defined Benefit Program, and a return of the Defined Benefit Supplement account balance, of the nonmember spouse under this part.

(b) The nonmember spouse shall file an application on a form provided by the system to obtain a refund or lump-sum payment.

(c) The refund of accumulated retirement contributions and the return of the accumulated Defined Benefit Supplement account balance under this part are effective when the system deposits in the United States mail an initial warrant drawn in favor of the nonmember spouse and addressed to the latest address for the nonmember spouse on file with the system.

(d) If the nonmember spouse has elected on a form provided by the system to transfer all or a specified portion of the accumulated retirement contributions or accumulated Defined Benefit Supplement account balance that are eligible for direct trustee-to-trustee transfer to the trustee of a qualified plan under Section 402 of the Internal Revenue Code of 1986 (26 U.S.C.A. Sec. 402), deposit in the United States mail of a notice that the requested transfer has been made constitutes a refund of the nonmember spouse's accumulated retirement contributions or accumulated Defined Benefit Supplement account balance. This subdivision shall not apply to a nonmember domestic partner, consistent with Section 402 of the Internal Revenue Code.

(e) The nonmember spouse is deemed to have permanently waived all rights and benefits pertaining to the service credit, accumulated retirement contributions, and accumulated Defined Benefit Supplement account balance under this part when the refund and lump-sum payment become effective.

(f) The nonmember spouse may not cancel a refund or lump-sum payment under this part after it is effective.

(g) The nonmember spouse shall not have a right to elect to redeposit the refunded accumulated retirement contributions under this part after

the refund is effective, to redeposit under Section 22662 or purchase additional service credit under Section 22663 after the refund becomes effective, or to redeposit the accumulated Defined Benefit Supplement account balance after the lump-sum payment becomes effective.

(h) If the total service credit in the separate account of the nonmember spouse under the Defined Benefit Program, including service credit purchased under Sections 22662 and 22663, is less than two and one-half years, the board shall refund the accumulated retirement contributions in the account.

SEC. 9. Section 22663 of the Education Code is amended to read:

22663. The nonmember spouse who is awarded a separate account under this part has the right to purchase additional service credit in accordance with the determination of the court pursuant to Section 22652.

(a) The nonmember spouse may purchase only the service credit that the court, pursuant to Section 22652, has determined to be the community property interest of the nonmember spouse.

(b) The nonmember spouse shall inform the system in writing of his or her intent to purchase additional service credit within 180 days after the date the judgment or court order addressing the right of the nonmember spouse to purchase additional service credit is entered. The nonmember spouse shall elect to purchase additional service credit on a form provided by the system within 30 days after the system mails an election form and billing.

(c) If the nonmember spouse elects to purchase additional service credit, he or she shall pay, prior to retirement under this part, all contributions with respect to the additional service at the contribution rate for additional service credit in effect at the time of election and regular interest from July 1 of the year following the year upon which contributions are based.

(1) (A) The nonmember spouse shall purchase additional service credit by paying the required contributions and interest in one lump sum, or in not more than 120 monthly installments, provided that no installment, except the final installment, is less than twenty-five dollars ($25). Regular interest shall be charged on the monthly, unpaid balance if the nonmember spouse pays in installments.

(B) If any payment due, because of the election, is not received at the system's office in Sacramento within 120 days of its due date, the election shall be canceled and any payments made under the election shall be returned to the nonmember spouse.

(2) The contributions shall be based on the member's compensation earnable in the most recent school year during which the member was employed, preceding the date of separation established by the court pursuant to Section 22652.

(3) All payments of contributions and interest shall be received by the system before the effective date of the retirement of the nonmember spouse.

(d) The nonmember spouse does not have a right to purchase additional service credit under this part after the effective date of a refund of the accumulated retirement contributions in the separate account of the nonmember spouse.

(e) The member does not have a right to purchase the community property interest of the nonmember spouse of additional service credit under this part whether or not the nonmember spouse elects to purchase the additional service credit. However, any additional service credit eligible for purchase that is not explicitly awarded to the nonmember spouse by the judgment or court order shall be deemed the exclusive property of the member.

SEC. 10. Section 22705.5 of the Education Code is amended to read:

22705.5. Service subject to coverage by the San Francisco City and County Employees' Retirement System pursuant to Section 24701 is excluded from coverage in the Defined Benefit Program. The member shall retain the right to receive a retirement allowance for creditable service that is subject to coverage under the Defined Benefit Program unless he or she withdraws his or her accumulated retirement contributions for that service.

SEC. 11. Section 22714 of the Education Code is amended to read:

22714. (a) Whenever the governing board of a school district or a community college district or a county office of education, by formal action, determines pursuant to Section 44929 or 87488 that because of impending curtailment of or changes in the manner of performing services, the best interests of the district or county office of education would be served by encouraging certificated employees or academic employees to retire for service and that the retirement will result in a net savings to the district or county office of education, an additional two years of service credit shall be granted under this part to a member of the Defined Benefit Program if all of the following conditions exist:

(1) The member is credited with five or more years of service credit and retires for service under Chapter 27 (commencing with Section 24201) during a period of not more than 120 days or less than 60 days, commencing no sooner than the effective date of the formal action of the employer that shall specify the period.

(2) The employer transfers to the retirement fund an amount determined by the Teachers' Retirement Board to equal the actuarial equivalent of the difference between the allowance the member receives after receipt of service credit pursuant to this section and the amount the member would have received without the service credit and an amount

determined by the Teachers' Retirement Board to equal the actuarial equivalent of the difference between the purchasing power protection supplemental payment the member receives after receipt of service credit pursuant to this section and the amount the member would have received without the service credit. The payment for purchasing power shall be deposited in the Supplemental Benefit Maintenance Account established by Section 22400 and shall be subject to Section 24415. The transfer to the retirement fund shall be made in a manner and a time period, not to exceed eight years, that is acceptable to the Teachers' Retirement Board. The employer shall transfer the required amount for all eligible employees who retire pursuant to this section.

(3) The employer transmits to the retirement fund the administrative costs incurred by the system in implementing this section, as determined by the Teachers' Retirement Board.

(4) The employer has considered the availability of teachers or academic employees to fill the positions that would be vacated pursuant to this section.

(b) (1) The school district shall demonstrate and certify to the county superintendent that the formal action taken would result in a net savings to the district.

(2) The county superintendent shall certify to the Teachers' Retirement Board that the result specified in paragraph (1) can be demonstrated. The certification shall include, but not be limited to, the information specified in subdivision (b) of Section 14502.

(3) The school district shall reimburse the county superintendent for all costs to the county superintendent that result from the certification.

(c) (1) The county office of education shall demonstrate and certify to the Superintendent of Public Instruction that the formal action taken would result in a net savings to the county office of education.

(2) The Superintendent of Public Instruction shall certify to the Teachers' Retirement Board that the result specified in paragraph (1) can be demonstrated. The certification shall include, but not be limited to, the information specified in subdivision (b) of Section 14502.

(3) The Superintendent of Public Instruction may request reimbursement from the county office of education for all administrative costs that result from the certification.

(d) (1) The community college district shall demonstrate and certify to the chancellor's office that the formal action taken would result in a net savings to the district.

(2) The chancellor shall certify to the Teachers' Retirement Board that the result specified in paragraph (1) can be demonstrated. The certification shall include, but not be limited to, the information specified in subdivision (c) of Section 84040.5.

(3) The chancellor may request reimbursement from the community college district for all administrative costs that result from the certification.

(e) The opportunity to be granted service credit pursuant to this section shall be available to all members employed by the school district, community college district, or county office of education who meet the conditions set forth in this section.

(f) The amount of service credit shall be two years.

(g) Any member of the Defined Benefit Program who retires under this part for service under Chapter 27 (commencing with Section 24201) with service credit granted under this section and who subsequently reinstates shall forfeit the service credit granted under this section.

(h) Any member of the Defined Benefit Program who retires under this part for service under Chapter 27 (commencing with Section 24201) with service credit granted under this section and who takes any job with any school district in the state less than one year after receiving the credit shall forfeit the ongoing benefit he or she receives from the additional service credit granted under this section.

(i) Any member of the Defined Benefit Program who retires under this part for service under Chapter 27 (commencing with Section 24201) with service credit granted under this section and who takes any job with the school district that granted the member the service credit less than five years after receiving the credit shall forfeit the ongoing benefit he or she receives from the additional service credit granted under this section.

(j) This section does not apply to any member otherwise eligible if the member receives any unemployment insurance payments arising out of employment with an employer subject to this part during a period extending one year beyond the effective date of the formal action, or if the member is not otherwise eligible to retire for service.

SEC. 12. Section 23203 of the Education Code is amended to read:

23203. (a) A member who elects to redeposit refunded accumulated retirement contributions shall pay, prior to retirement, all contributions and interest as determined under Section 23200.

(b) If the system is unable to inform the member or beneficiary of the amount required to redeposit the refunded accumulated retirement contributions prior to the effective date of the applicable allowance, the member or beneficiary may make the required payment within 30 working days after the date of mailing of the statement of contributions and interest required or the effective date of the appropriate allowance, whichever is later. The payment shall be paid in full before a member or beneficiary receives any adjustment in the appropriate allowance due because of that payment.

(c) Redeposit of refunded accumulated retirement contributions shall be made in one sum, or in not more than 120 monthly installments, not to exceed ten years, provided that no installment, except the final installment, is less than twenty-five dollars ($25).

SEC. 13. Section 23300 of the Education Code is amended to read:

23300. (a) A member of the Defined Benefit Program may designate a beneficiary to receive benefits payable under this part upon the member's death. A beneficiary designation may not be made in derogation of a community property interest of a nonmember spouse, as defined by Section 25000.9, with respect to service or contributions credited under this part, unless the nonmember spouse has previously obtained an alternative order pursuant to Section 2610 of the Family Code.

(b) A member's beneficiary designation for benefits payable under the Defined Benefit Program, including a designation made pursuant to Section 24300, shall also apply to benefits payable under the Defined Benefit Supplement Program. A beneficiary designation shall be in writing on a form prescribed by the system and executed by the member.

(c) A beneficiary designation may not be valid unless it is received in the office of the system in Sacramento prior to the member's death.

(d) A member may change or revoke a beneficiary designation at any time by making a new designation pursuant to this section.

(e) This section is not applicable to the designation of an option beneficiary or an annuity beneficiary under this part.

(f) An option beneficiary may designate a death beneficiary who would, upon the death of the option beneficiary, be entitled to receive the option beneficiary's accrued monthly allowance.

SEC. 14. Section 23812 of the Education Code is amended to read:

23812. (a) The surviving spouse of a deceased member who previously lost entitlement to benefits prescribed by this part due to remarriage shall be entitled to resume payment of the benefits effective either on January 1, 2000, or the first day of the month following receipt by the board of a written application for resumption of benefits, whichever date is later. The amount of the benefits payable shall be calculated as though the benefits had been paid without interruption from the date of remarriage through the benefits resumption effective date.

(b) The board shall be under no requirement to identify, locate, or notify a remarried spouse of a deceased member who previously lost entitlement as a result of remarriage about the resumption of benefits provided in this section. The board shall be under no requirement to provide the name or address or any other information concerning any remarried spouse of a deceased member to any person, agency, or entity

for the purpose of notifying those who may be eligible for the resumption of benefits under this section.

(c) Nothing in this section shall be construed to imply or interpreted to mean that the benefits addressed shall be required to be paid retroactively.

(d) This section does not apply to the surviving domestic partner of a member.

SEC. 15. Section 24114 of the Education Code is amended to read:

24114. (a) A member receiving a disability retirement benefit under this part may be employed or self-employed in any capacity, notwithstanding Section 22132, but may not make contributions to the retirement fund with respect to the Defined Benefit Program or accrue service credit under this part based on earnings from any employment.

(b) A member receiving a disability retirement benefit under this part may earn in any one calendar year up to the limitation specified in subdivision (c) without a reduction in his or her disability retirement allowance.

(c) The limitation that shall apply to the earnings of a member receiving a disability retirement benefit under this part shall be fifteen thousand dollars ($15,000), in any one calendar year, adjusted annually by the board effective each January 1 by the amount of increase in the All Urban California Consumer Price Index using December 1989 as the base.

(d) If a member receiving a disability retirement benefit under this part earns in excess of the limitation specified in subdivision (c) from all employment in any calendar year, notwithstanding Section 22132, his or her retirement allowance shall be reduced by the amount of the excess earnings. The amount of the reduction may be equal to the monthly allowance payable but may not exceed the amount of the annual allowance payable under this part for the calendar year in which the excess compensation was earned.

(e) The earnings limitation specified in this section does not apply to a member receiving a disability retirement benefit under this part who is participating in an approved rehabilitation program pursuant to Section 24111.

(f) This section does not apply to a member receiving a disability retirement benefit under this part who began receiving a disability retirement allowance prior to October 16, 1992.

SEC. 16. Section 24203.6 of the Education Code is amended to read:

24203.6. (a) In addition to the amount otherwise payable pursuant to Sections 24202.5, 24203, 24203.5, 24205, 24209, 24209.3, 24210, 24211, and 24212, a member who (1) retires for service on or after January 1, 2001, (2) has, prior to January 1, 2011, 30 or more years of

credited service, excluding service credited pursuant to Sections 22714, 22714.5, 22715, 22717, 22717.5, and 22826 but including any credited service that a court has ordered be awarded to a nonmember spouse pursuant to Section 22652, and (3) is receiving an allowance subject to Section 24203.5, shall receive a monthly increase in the allowance, prior to any modification pursuant to Sections 24300 and 24309, in the amount identified in the following schedule for the number of years of the member's credited service at the time of retirement, excluding service credited pursuant to Sections 22714, 22714.5, 22715, 22717, 22717.5, and 22826 but including any credited service that a court has ordered be awarded to a nonmember spouse pursuant to Section 22652:

30 years of credited service	$200
31 years of credited service	$300
32 or more years of credited service	$400

(b) This section also shall apply to a nonmember spouse, if the member is eligible for the allowance increase pursuant to subdivision (a) upon his or her retirement for service and had at least 30 years of credited service, excluding service credited pursuant to Sections 22714, 22714.5, 22715, 22717, 22717.5, and 22826, on the date the parties separated, as established in the judgment or court order pursuant to Section 22652 and the service credit of the member was divided into separate accounts in the name of the member and the nonmember spouse by a court pursuant to Section 22652. The amount identified in the schedule in subdivision (a) and payable pursuant to this section, that is based on the service credited during the marriage, shall be divided and paid to the member and the nonmember spouse proportionately according to the respective percentages of the member's service credit that were allocated to the member and the nonmember spouse in the court's order.

(c) The allowance increase provided under this section shall not be subject to Sections 24415 and 24417, but shall be subject to Section 22140.

SEC. 17. Section 24204 of the Education Code is amended to read:

24204. A service retirement allowance under this part shall become effective upon any date designated by the member, provided all of the following conditions are met:

(a) An application for service retirement allowance is filed on a form provided by the system, that is executed no earlier than six months before the effective date of retirement allowance.

(b) The effective date is later than the last day of creditable service for which compensation is payable to the member.

(c) The effective date is no earlier than the first day of the month in which the application is received at the system's office in Sacramento.

(d) Either of the following conditions exists:

(1) The effective date is no earlier than one year following the date on which the retirement allowance was terminated under Section 24208, or subdivision (a) of Section 24117.

(2) The effective date is no earlier than the date upon and continuously after which the member is determined to the satisfaction of the board to have been mentally incompetent.

(e) A member who files an application prior to the effective date of retirement may change or cancel his or her retirement application, as long as the form provided by the system is received in the system's office in Sacramento no later than the last day of the month in which the retirement date is effective.

SEC. 18. Section 24209.3 of the Education Code is amended to read:

24209.3. (a) Notwithstanding subdivision (a) of Section 24209 and subdivision (d) of Section 24204, and exclusive of any amounts payable during the prior retirement for service pursuant to Section 22714, 22714.5, or 22715:

(1) A member who retired, other than pursuant to Section 24210, 24211, 24212, or 24213, and who reinstates and performs creditable service, as defined in Section 22119.5, after the most recent reinstatement, in an amount equal to two or more years of credited service, shall, upon retirement for service on or after the effective date of this section, receive a service retirement allowance equal to the sum of the following:

(A) An amount calculated pursuant to this chapter based on credited service performed prior to the most recent reinstatement, using the member's age at the subsequent service retirement, from which age shall be deducted the total time during which the member was retired for service, and final compensation.

(B) An amount calculated pursuant to this chapter based on credited service performed subsequent to the most recent reinstatement, using the member's age at the subsequent service retirement, and final compensation.

(2) A member who retired pursuant to Section 24210 and who reinstates and performs creditable service, as defined in Section 22119.5, after the most recent reinstatement, in an amount equal to two or more years of credited service, shall, upon retirement for service on or after the effective date of this section, receive a service retirement allowance equal to the sum of the following:

(A) An amount calculated pursuant to this chapter based on service credit accrued prior to the effective date of the disability retirement, using the member's age at the subsequent service retirement, from which age shall be deducted the total time during which the member was retired

for service, and indexed final compensation to the effective date of the initial service retirement.

(B) An amount calculated pursuant to this chapter based on the service credit accrued after termination of the disability retirement, using the member's age at the subsequent service retirement, from which age shall be deducted the total time during which the member was retired for service, and final compensation.

(C) An amount calculated pursuant to this chapter based on credited service performed subsequent to the most recent reinstatement, using the member's age at the subsequent service retirement, and final compensation.

(3) A member who retired pursuant to Section 24211 and who reinstates and performs creditable service, as defined in Section 22119.5, after the most recent reinstatement, in an amount equal to two or more years of credited service, shall, upon retirement for service on or after the effective date of this section, receive a service retirement allowance equal to the sum of the following:

(A) The greater of (i) the disability allowance the member was receiving immediately prior to termination of that allowance, excluding the children's portion, or (ii) an amount calculated pursuant to this chapter based on service credit accrued prior to the effective date of the disability allowance, using the member's age at the subsequent service retirement, from which age shall be deducted the total time during which the member was retired for service, and final compensation using compensation earnable or projected final compensation or a combination of both.

(B) An amount equal to either of the following:

(i) For a member who was receiving a benefit pursuant to subdivision (a) of Section 24211, the member's credited service at the time of the retirement pursuant to Section 24211, excluding service credited pursuant to Section 22717 or 22717.5 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820) or Chapter 19 (commencing with Section 23200).

(ii) For a member who was receiving a benefit pursuant to subdivision (b) of Section 24211, the member's projected service, excluding service credited pursuant to Section 22717 or 22717.5 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820) or Chapter 19 (commencing with Section 23200).

(C) An amount calculated pursuant to this chapter based on credited service performed subsequent to the most recent reinstatement, using the member's age at the subsequent service retirement, and final compensation using compensation earnable or projected final compensation or a combination of both.

(D) An amount based on any service credited pursuant to Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820) or Chapter 19 (commencing with Section 23200) or, for credited service performed during the most recent reinstatement, Section 22714, 22714.5, 22715, 22717, or 22717.5, using the member's age at the subsequent service retirement, from which age shall be deducted the total time during which the member was retired for service, and final compensation using compensation earnable, or projected final compensation, or a combination of both.

(4) A member who retired pursuant to Section 24212 or 24213 and who reinstates and performs creditable service, as defined in Section 22119.5, after the most recent reinstatement, in an amount equal to two or more years of credited service, shall, upon retirement for service on or after the effective date of this section, receive a service retirement allowance equal to the sum of the following:

(A) An amount calculated pursuant to this chapter based on the member's projected service credit, excluding service credited pursuant to Section 22717, 22717.5, or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820) or Chapter 19 (commencing with Section 23200), using the member's age at the subsequent service retirement, from which age shall be deducted the total time during which the member was retired for service, and final compensation using compensation earnable or projected final compensation or a combination of both.

(B) An amount calculated pursuant to this chapter based on credited service performed subsequent to the most recent reinstatement, using the member's age at the subsequent service retirement, and final compensation, using compensation earnable or projected final compensation or a combination of both.

(C) An amount based on any service credited pursuant to Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820) or Chapter 19 (commencing with Section 23200) or, for credited service performed during the most recent reinstatement, Section 22714, 22714.5, 22715, 22717, or 22717.5, using the member's age at the subsequent service retirement, from which age shall be deducted the total time during which the member was retired for service, and final compensation using compensation earnable, or projected final compensation, or a combination of both.

(b) If the total amount of credited service, other than that accrued pursuant to Sections 22714, 22714.5, 22715, 22717, 22717.5, and 22826, is equal to or greater than the number of years required to be eligible for an increased allowance pursuant to this chapter or Section 22134.5, the amounts identified in this section shall be calculated pursuant to the section authorizing the increased benefit.

(c) For members receiving an allowance pursuant to Section 24410.5 or 24410.6, the amount payable pursuant to this section shall not be less than the amount payable to the member as of the effective date of reinstatement.

(d) The amount payable pursuant to this section shall not be less than the amount that would be payable to the member pursuant to Section 24209.

(e) For purposes of determining an allowance increase pursuant to Sections 24415 and 24417, the calendar year of retirement shall be the year of the subsequent retirement if the final compensation used to calculate the allowance pursuant to this section is higher than the final compensation used to calculate the allowance for the prior retirement.

(f) The allowance paid pursuant to this section to a member receiving a lump-sum payment pursuant to Section 24221 shall be actuarially reduced to reflect that lump-sum payment.

SEC. 19. Section 24211 of the Education Code is amended to read:

24211. When a member who has been granted a disability allowance under this part after June 30, 1972, returns to employment subject to coverage under the Defined Benefit Program and performs:

(a) Less than three years of creditable service after termination of the disability allowance, the member shall receive a retirement allowance which is the sum of the allowance calculated on service credit accrued after the termination date of the disability allowance, the age of the member on the last day of the month in which the retirement allowance begins to accrue, and final compensation using compensation earnable and projected final compensation, plus the greater of either of the following:

(1) A service retirement allowance calculated on service credit accrued as of the effective date of the disability allowance, the age of the member on the last day of the month in which the retirement allowance begins to accrue, and projected final compensation excluding service credited pursuant to Sections 22717 and 22717.5 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820) or Chapter 19 (commencing with Section 23200), to the termination date of the disability allowance.

(2) The disability allowance the member was receiving immediately prior to termination of that allowance, excluding children's portions.

(b) Three or more years of creditable service after termination of the disability allowance, the member shall receive a retirement allowance that is the greater of the following:

(1) A service retirement allowance calculated on all actual and projected service excluding service credited pursuant to Sections 22717 and 22717.5 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820) or Chapter 19

(commencing with Section 23200), the age of the member on the last day of the month in which the retirement allowance begins to accrue, and final compensation using compensation earnable, or projected final compensation, or a combination of both.

(2) The disability allowance the member was receiving immediately prior to termination of that allowance, excluding children's portions.

(c) The allowance shall be increased by an amount based on any service credited pursuant to Sections 22714, 22714.5, 22715, 22717, and 22717.5 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820) or Chapter 19 (commencing with Section 23200), and final compensation using compensation earnable, or projected final compensation, or a combination of both.

(d) If the total amount of credited service, other than projected service or service that accrued pursuant to Sections 22714, 22714.5, 22715, 22717, 22717.5, and 22826, is equal to or greater than 30 years, the amounts identified in subdivisions (a) and (b) shall be calculated pursuant to Sections 24203.5 and 24203.6.

SEC. 20. Section 24212 of the Education Code is amended to read:

24212. (a) If a disability allowance granted under this part after June 30, 1972, is terminated for reasons other than those specified in Section 24213 and the member does not return to employment subject to coverage under the Defined Benefit Program, the member's service retirement allowance, when payable, shall be based on projected service, excluding service credited pursuant to Sections 22717 and 22717.5 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820), projected final compensation, and the age of the member on the last day of the month in which the retirement allowance begins to accrue. The allowance payable under this section, excluding annuities payable from accumulated annuity deposit contributions, shall not be greater than the terminated disability allowance excluding children's portions.

(b) The allowance shall be increased by an amount based on any service credited pursuant to Sections 22714, 22714.5, 22715, 22717, and 22717.5 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820) or Chapter 19 (commencing with Section 23200) and final compensation using compensation earnable, or projected final compensation, or a combination of both.

SEC. 21. Section 24213 of the Education Code is amended to read:

24213. (a) When a member who has been granted a disability allowance under this part after June 30, 1972, attains normal retirement age, or at a later date when there is no dependent child, the disability allowance shall be terminated and the member shall be eligible for

service retirement. The retirement allowance shall be calculated on the projected final compensation and projected service to normal retirement age, excluding service credited pursuant to Section 22717 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820). The allowance payable under this section, excluding annuities payable from accumulated annuity deposit contributions, shall not be greater than the terminated disability allowance. The allowance shall be increased by an amount based on any service credited pursuant to Section 22714, 22714.5, 22715, or 22717 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820) or Chapter 19 (commencing with Section 23200) and projected final compensation to normal retirement age.

(b) Upon retirement, the member may elect to modify the service retirement allowance payable in accordance with any option provided under this part.

SEC. 22. Section 24214 of the Education Code, as amended by Section 2 of Chapter 903 of the Statutes of 2002, is amended to read:

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

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

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

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

(e) (1) The postretirement compensation limitation provisions set forth in this section are not applicable to compensation earned by a member retired for service under this part who has returned to work after the date of retirement and, for a period of at least 12 consecutive months,

has not performed the activities identified in paragraphs (1) to (9), inclusive, of subdivision (a), or subdivision (b), of Section 22119.5 as an employee of an employer, as an employee of a third party, or as an independent contractor within the California public school system.

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

(f) The limitation that shall apply to the compensation for performance of the activities identified in paragraphs (1) to (9), inclusive, of subdivision (a), or subdivision (b), of Section 22119.5 by a member retired for service under this part either as an employee of an employer, an employee of a third party, or as an independent contractor, shall, in any one school year, be an amount calculated by the board each July 1 equal to twenty-two thousand dollars ($22,000) adjusted by the percentage change in the average compensation earnable of active members of the Defined Benefit Program, as determined by the system, from the 1998–99 fiscal year to the fiscal year ending in the previous calendar year.

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

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

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

SEC. 23. Section 24214 of the Education Code, as amended by Section 21 of Chapter 859 of the Statutes of 2003, is amended to read:

24214. (a) A member retired for service under this part may perform the activities identified in paragraphs (1) to (9), inclusive, of subdivision (a), or subdivision (b), of Section 22119.5 as an employee of an employer, as an employee of a third party, or as an independent contractor within the California public school system, but the member

may not make contributions to the retirement fund or accrue service credit based on compensation earned from that service.

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

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

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

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

(f) The limitation that shall apply to the compensation for performance of the activities identified in paragraphs (1) to (9), inclusive, of subdivision (a), or subdivision (b), of Section 22119.5 by a member retired for service under this part either as an employee of an employer, an employee of a third party, or as an independent contractor, shall, in any one school year, be an amount calculated by the board each July 1 equal to twenty-two thousand dollars ($22,000) adjusted by the percentage change in the average compensation earnable of active members of the Defined Benefit Program, as determined by the system, from the 1998–99 fiscal year to the fiscal year ending in the previous calendar year.

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

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

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

SEC. 24. Section 25000.9 of the Education Code is amended to read:

25000.9. For purposes of this chapter and Section 23300, ''nonmember spouse'' means a member's spouse or former spouse, and also includes a member's registered domestic partner or former registered domestic partner, who is being or has been awarded a community property interest in the service credit, accumulated retirement contributions, accumulated Defined Benefit Supplement account balance, or benefits of the member under this part. A nonmember spouse may not be considered a member based upon his or her receipt of any of the following being awarded to the nonmember spouse as a result of legal separation, dissolution of marriage, or dissolution of domestic partnership:

(a) A separate account of service credit and accumulated retirement contributions, a retirement allowance, or an interest in the member's retirement allowance under the Defined Benefit Program.

(b) A separate account based on the member's Defined Benefit Supplement account balance, a retirement benefit, or an interest in the member's retirement benefit under the Defined Benefit Supplement Program.

SEC. 25. Section 25100 of the Education Code is amended to read:

25100. (a) The board shall establish a vendor registration process through which information about tax-deferred retirement investment products as described in Section 403(b) of the Internal Revenue Code of 1986 shall be made available for consideration by public employees of all local school districts, community college districts, and county offices of education.

(b) For the purposes of this chapter, ''403(b) product or 403(b) products'' means tax-deferred retirement investment products as described in Section 403(b) of the Internal Revenue Code of 1986, and its subsequent amendments, and complying with applicable California insurance laws, and federal and California securities laws and rules as applied by appropriate regulatory entities.

(c) For the purposes of this chapter, ''vendor'' means a public retirement system, broker-dealer, registered investment company, nonbank custodian, or life insurance company qualified to do business in California that provides 403(b) products. ''Vendor'' does not include individual registered representatives, brokers, financial planners, or agents. ''Nonbank custodian'' means a fund custodian, other than a

bank, that meets the criteria of a trustee specified in Section 408(a)(2) of the Internal Revenue Code. ''Broker-dealer'' means only those broker-dealers who offer a proprietary 403(b) product or who charge fees that are otherwise not disclosed.

SEC. 26. Section 25107 of the Education Code is amended to read:

25107. A vendor may not charge a fee associated with a registered 403(b) product that is not disclosed, pursuant to Section 25101.

SEC. 27. Section 26002.5 is added to the Education Code, to read:

26002.5. Except as excluded in Sections 26004 and 27406, any reference to a ''spouse'' in this part includes a person who is the registered domestic partner of a member, as established pursuant to Section 297 or 299.2 of the Family Code.

SEC. 28. Section 26004 of the Education Code is amended to read:

26004. Notwithstanding any other provision of law:

(a) The benefits payable to any participant or beneficiary under this part shall be subject to the limitations imposed by Section 415 of Title 26 of the United States Code.

(b) The amount of compensation that is taken into account in computing benefits under this part for a plan year shall not exceed the annual compensation limit applicable to that plan year in accordance with Section 401(a)(17) of Title 26 of the United States Code as that section read on the effective date of this section and as that section may be amended after that date. The determination of compensation for a 12-month period shall be subject to the annual compensation limit in effect for the calendar year in which the 12-month period begins. In a determination of average compensation over more than one 12-month period, the amount of compensation taken into account for each 12-month period shall be subject to the respective annual compensation limit applicable to that period.

(c) Distributions from the plan under this part shall be made in accordance with Section 401(a)(9) of Title 26 of the United States Code, including the incidental death benefit requirements of Section 401(a)(9)(G) and the regulations thereunder. The required beginning date of benefit payments that represent the entire interest of the participant shall be as follows:

(1) In the case of a lump-sum distribution of a retirement benefit, disability benefit, or termination benefit, the lump-sum payment shall be made not later than April 1 of the calendar year following the later of the calendar year in which the participant attains the age of $70^1/_2$ years or the calendar year in which the participant terminates all employment subject to coverage by the plan.

(2) In the case of a retirement benefit or disability benefit that is to be paid in the form of an annuity, payment of the annuity shall begin not later than April 1 of the calendar year following the later of the calendar

year in which the participant attains the age of $70^1/_2$ years or the calendar year in which the participant terminates employment in all positions subject to coverage by the plan, with the annuity to continue over the life of the participant or the life of the participant and the participant's option beneficiary, or over a period not to exceed the life expectancy of the participant or the life expectancy of the participant and the participant's option beneficiary.

(3) In the case of a death benefit, distributions shall commence no later than the date provided in Section 27001.

(d) If a person becomes entitled to a distribution from the plan under this part that constitutes an eligible rollover distribution within the meaning of Section 401(a)(31) of Title 26 of the United States Code, the person may elect under terms and conditions established by the board to have the distribution or a portion thereof paid directly to a plan that constitutes an eligible retirement plan within the meaning of Section 401(a)(31), as specified by that person. Upon the exercise of the election by a person with respect to a distribution or a portion thereof, the distribution from the plan of the amount so designated, once distributable under the terms of the plan, shall be made in the form of a direct rollover to the eligible retirement plan so specified. This subdivision does not apply to the surviving domestic partner of a member, consistent with Section 402 of the Internal Revenue Code.

(e) The amount of any benefit from the plan under this part that is determined on the basis of actuarial assumptions shall be based on actuarial assumptions adopted by the board pursuant to Section 26213 as a plan amendment with respect to the Cash Balance Benefit Program and those assumptions shall preclude employer discretion and comply with Section 401(a)(25) of Title 26 of the United States Code.

SEC. 29. Section 26140 of the Education Code is amended to read:

26140. (a) ''Spouse'' means the person married to the participant on the date the participant files a beneficiary designation, or an application for a benefit, or on the date of the participant's death.

(b) Except as excluded in Sections 26004 and 27406, ''spouse'' also includes the person who is the registered domestic partner of the participant, as established pursuant to Section 297 or 299.2 of the Family Code, on the date the participant files a beneficiary designation or an application for a benefit, or on the date of the participant's death.

SEC. 30. Section 27400 of the Education Code is amended to read:

27400. (a) This chapter establishes the power of a court in a dissolution of marriage or legal separation action with respect to community property rights in benefits under this part and defines the rights of nonparticipant spouses in the Cash Balance Benefit Program.

(b) For purposes of this chapter, any reference to ''dissolution of marriage or legal separation'' also includes the termination or

dissolution of a domestic partnership, nullity of a domestic partnership, or the legal separation of the partners in a domestic partnership, as provided in Section 299 of the Family Code.

SEC. 31. Section 27401 of the Education Code is amended to read:

27401. For purposes of this chapter, ''nonparticipant spouse'' means a participant's spouse or former spouse, and also includes a participant's registered domestic partner or former registered domestic partner, who is being or has been awarded a community property interest in the benefits determined by reference to the amounts credited to a participant's employee and employer accounts or the participant's annuity. A nonparticipant spouse who is awarded separate nominal accounts is not a participant in the Cash Balance Benefit Program. A nonparticipant spouse who receives or is awarded an interest in a participant's annuity is not a participant in the Cash Balance Benefit Program.

SEC. 32. Section 27406 of the Education Code is amended to read:

27406. The nonparticipant spouse who is awarded separate nominal accounts with respect to the Cash Balance Benefit Program shall have the right to a lump-sum distribution of amounts credited to the account.

(a) The nonparticipant spouse shall file an application on a form provided by the system to obtain the distribution.

(b) The distribution is effective when the system deposits in the United States mail a warrant drawn in favor of the nonparticipant spouse and addressed to the latest address for the nonparticipant spouse on file with the system.

(c) If the nonparticipant spouse has elected on a form provided by the system to transfer all or a specified portion of the accounts that are eligible for direct trustee-to-trustee transfer under Section 401(a)(31) of Title 26 of the United States Code to the trustee of a qualified plan under Section 402 of Title 26 of the United States Code, deposit in the United States mail of a notice that the requested transfer has been made constitutes a distribution of the nonparticipant spouse's credit balance from the separate nominal accounts. This subdivision shall not apply to a nonparticipant domestic partner, consistent with Section 402 of the Internal Revenue Code.

(d) The nonparticipant spouse is deemed to have permanently waived all rights to an annuity when the distribution becomes effective.

(e) The nonparticipant spouse may not cancel a distribution after the distribution is effective.

(f) The nonparticipant spouse shall have no right to elect to redeposit the distribution after the distribution is effective.

SEC. 33. Section 44987 of the Education Code is amended to read:

44987. (a) The governing board of a school district shall grant to any employee, upon request, a leave of absence without loss of

compensation for the purpose of enabling the employee to serve as an elected officer of any local school district public employee organization, or any statewide or national public employee organization with which the local organization is affiliated.

The leave shall include, but is not limited to, absence for purposes of attendance by the employee at periodic, stated, special, or regular meetings of the body of the organization on which the employee serves as an officer. Compensation during the leave shall include retirement fund contributions required of the school district as employer. The required employer contribution rate shall be the rate adopted by the Teachers' Retirement Board as a plan amendment with respect to the Defined Benefit Program as provided in Section 22711. The employee shall earn full service credit during the leave of absence and shall pay member contributions as prescribed by Section 22711. The maximum amount of the service credit earned may not exceed twelve calendar years. Any employee who serves as a full-time officer of a public employee organization is not eligible for disability benefits under the State Teachers' Retirement Plan while on the leave of absence.

Following the school district's payment of the employee for the leave of absence, the school district shall be reimbursed by the employee organization of which the employee is an elected officer for all compensation paid the employee on account of the leave. Reimbursement by the employee organization shall be made within 10 days after its receipt of the school district's certification of payment of compensation to the employee.

The leave of absence without loss of compensation provided for by this section is in addition to the released time without loss of compensation granted to representatives of an exclusive representative by subdivision (c) of Section 3543.1 of the Government Code.

For purposes of this section, ''school district'' also means ''county superintendent of schools.''

(b) An employee who after August 31, 1978, was absent on account of elected-officer service, shall receive full service credit in the State Teachers' Retirement Plan; provided that, not later than April 30, 1981: (1) the employee makes a written request to the employer for a leave of absence for the period of the elected-officer service, and (2) the employee organization of which the employee is an elected officer pays to the employee's school district an amount equal to the required State Teachers' Retirement Plan member and employer retirement contributions, as prescribed by this section.

The school district, following this written request and payment, shall transmit the amount received to the State Teachers' Retirement System, informing it of the period of the employee's leave of absence. The State

Teachers' Retirement System shall credit the employee with all service credit earned for the period of the elected-officer leave of absence.

If the employee has been compensated by the school district for the period of the service, then, as a condition to the employee's entitlement to service credit for this period, the school district shall be reimbursed by the employee organization for the amount of the compensation.

The provisions of this subdivision shall apply retroactively to all service as an elective officer in a public employee organization occurring after August 31, 1978.

SEC. 34. Any section of any act enacted by the Legislature during the second year of the 2003–04 Regular Session that amends, amends and renumbers, adds, repeals and adds, or repeals a statute that is amended by this act shall prevail over this act, whether that act is enacted prior or subsequent to the enactment of this act.

CHAPTER 913

An act to add Sections 12996.5, 12997.5, and 12997.7 to the Food and Agricultural Code, relating to pesticides.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 2004.]

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

SECTION 1. Section 12996.5 is added to the Food and Agricultural Code, to read:

12996.5. (a) For the purposes of this chapter:

(1) ''Office'' means the Office of Environmental Health Hazard Assessment.

(2) ''Department'' means the Department of Pesticide Regulation.

(3) ''Certified Unified Program Agency'' or ''CUPA'' means the agency certified by the Secretary for Environmental Protection to implement the unified program specified in Chapter 6.11 (commencing with Section 25404) of Division 20 of the Health and Safety Code within a jurisdiction.

(4) ''Agency'' means the California Environmental Protection Agency.

(5) ''Nonoccupational'' means that the person exposed to the pesticide was not at the time of the exposure performing work as an employee.

(6) ''Acute'' means a medical condition that involves a sudden onset of symptoms due to an illness, injury, or other medical problem that requires prompt medical attention and that has a limited duration.

(7) ''Uncompensated medical care'' means the cost of care not covered by any other program, including, but not limited to copayments for medical insurance, Healthy Families Program, or Medi-Cal. Reimbursed medical costs shall not exceed 125 percent of the Medi-Cal reimbursement rates.

(b) The exposure of each person to a pesticide resulting from the violation of Section 12972 or 12973, or any regulation adopted pursuant to Section 12976, 12981, or 14005, that causes acute illnesses or injury, shall constitute a separate violation of the statute or regulation.

SEC. 2. Section 12997.5 is added to the Food and Agricultural Code, to read:

12997.5. (a) In addition to any penalties paid in connection with an enforcement action taken pursuant to Sections 12996, 12997, 12999, and 12999.5, any person who is found in violation of any provision of this division related to pesticides or any regulation related to pesticides adopted pursuant to this division that results in illness or injury requiring emergency medical transport or immediate medical treatment of any individual in a nonoccupational setting from any pesticide used in the production of an agricultural commodity, shall be liable to the individual harmed or to the medical provider for the immediate costs of uncompensated medical care from acute injuries and illnesses of the exposed individual.

(b) Any order issued in connection with a finding of a violation as described in subdivision (a) shall include the obligation to reimburse medical costs from acute illnesses and injuries of any individual requiring immediate medical treatment as a consequence of this violation to the injured individuals or their medical providers.

(c) Any person found in violation of this section shall submit to the director within 30 days of the final determination of liability, a written plan on how they will pay individuals and medical providers for the emergency medical transport and the immediate medical costs from acute medical injuries and illnesses of all individuals requiring immediate medical treatment as a consequence of the violation. A person alleged to have violated subdivision (a) may voluntarily submit a written plan pursuant to this section prior to the determination of liability. The contents of the voluntary plan shall not be held against the person in any action to determine whether the person violated those provisions.

(d) Any violation of this section shall be subject to the criminal and civil sanctions and penalties set forth in this division.

(e) Payment of emergency medical costs pursuant to this section shall not preclude an affected person from filing a civil action for injuries, illnesses, or costs related to the incident. Any damage award associated with a civil action related to the incident shall be reduced by the amount the plaintiff received from this section.

(f) Payment of emergency medical costs pursuant to this section shall not be held against the person in any action to determine whether the person violated those provisions.

(g) For any person who provides for the immediate reimbursement of medical costs for acute medical illnesses and injuries prior to a final determination by the department, the director or agricultural commissioner may reduce, by not more than 50 percent, the fines imposed pursuant to Section 12996.5. This reduction shall not limit the responsible party's financial obligation under this section. The department or agricultural commissioner shall attempt to complete the determination within 45 days of the incident.

SEC. 3. Section 12997.7 is added to the Food and Agricultural Code, to read:

12997.7. (a) The agency, in consultation with the department, the office, county agricultural commissioners, local health officers, CUPAs, and affected community members, shall by August 31, 2005, establish minimum standard protocols for the purposes of amending area plans.

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

(1) Protocols for requesting and providing immediate access to pesticide-specific information necessary to assist emergency medical services personnel in identifying pesticides that may be causing a pesticide drift exposure incident and appropriate treatments.

(2) Protocols to delineate specific agency responsibilities and the process for responding to calls, notifying residents, and coordinating evacuation, if needed.

(3) Protocols to establish emergency shelter procedures and locations to be used in the event evacuation is needed.

(4) Protocols to access services in all languages known to be spoken in the affected area in accordance with Section 11135 of the Government Code.

(5) Protocols to ensure access to health care within 24 hours of the exposure and up to a week after the exposure.

(6) Protocols to notify medical providers regarding eligibility for reimbursement pursuant to Section 12997.5.

(c) The CUPA or administering agency shall amend the area plan for emergency response, pursuant to subdivision (c) of Section 25503, to specifically address pesticide drift exposure and to incorporate provisions of the protocols of subdivision (b).

(d) Upon the next scheduled update of the area plan, all CUPAs shall have incorporated a pesticide drift component into their area plan.

(e) The minimum standard protocols developed under subdivision (a) shall be in accordance with the California Environmental Protection Agency's guidelines.

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.

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 914

An act to amend Sections 52052, 56157, 56341.5, 56366, 56366.1, 56366.5, and 56366.9 of, and to add Sections 49085, 56026.3, 56155.7, 56366.10, 56366.11, and 56366.12 to, the Education Code, to amend Section 1501.1 of the Health and Safety Code, and to add Section 16014 to the Welfare and Institutions Code, relating to foster children.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 2004.]

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

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

(1) According to recent reports by the Little Hoover Commission and the American Institutes for Research, the educational outcomes for our children while in foster care are substandard and, in many cases, California's foster care and educational systems do not provide the educational, life skills, and employment supports and opportunities to ensure that all foster children are able to successfully transition from

dependency to self-sufficiency. Foster children that have been identified as requiring special education services, in order to benefit from their education, face extraordinary challenges.

(2) Pursuant to two recent reports, which were requested and funded by the Legislature and conducted by the American Institutes for Research, the subset of children in foster care who are also in special education and who have been placed in nonpublic schools do not always receive the same educational opportunities and often do not have access to the same caliber of instruction and instructional materials as individuals with exceptional needs in public schools.

(3) In the 2002–03 fiscal year, California spent over $129 million on 4,700 pupils residing in licensed children's institutions and placed in nonpublic schools to fund the provision of special education services by the nonpublic schools for this population.

(4) Approximately one-third of youth emancipating from foster care fail to complete high school and a limited number enter college, although two-thirds express a desire to attend college. Of those who do complete high school, not all of those pupils receive a grade point average, which is required for admission to a higher education institution.

(5) After emancipating from foster care, at least 25 percent experience homelessness, 33 percent receive welfare, 50 percent face unemployment, and approximately 25 percent are arrested and spend time incarcerated. Some of these problems could be diminished by ensuring that youth in foster care, including those who have been identified as individuals with exceptional needs, also receive the services that will assist them to transition to financial independence.

(6) Pupils in foster care are frequently moved to a different school, and often experience multiple placements during each school year, slowing their educational progress.

(7) Pupils in foster care lack parents to advocate for appropriate educational placement and service, and rely on surrogate parents, responsible adults, or the state to establish and monitor standards for curriculum, instruction, and services.

(8) California's current funding system for individuals with exceptional needs in foster care provides fiscal incentives for placement in a nonpublic school. These incentives may conflict with the goal of giving individuals with exceptional needs access to the least restrictive environment appropriate to their needs. According to the report of the American Institutes for Research, California's current system of funding nonpublic school services for children residing in licensed children's institutions is contrary to federal law.

(9) California's funding system also provides insufficient incentives to school districts to control costs when a child residing in a licensed children's institution is placed in a nonpublic school. According to the

report of the American Institutes for Research, California now spends between sixty-five thousand dollars ($65,000) and one hundred fifty thousand dollars ($150,000) per child annually to house and educate a child in foster care residing in a group home, the higher costs of which are incurred for those placed in a nonpublic school.

(10) State standards are substantially less comprehensive for nonpublic schools than the standards and monitoring applied to California's public schools.

(11) Accountability for educational outcomes for pupils in foster care is vague and the system for monitoring the educational progress of pupils in foster care placed in nonpublic schools, as well as those in the regular public schools, is inadequate.

(12) Foster children and other pupils who have been identified as individuals with exceptional needs have the right to the best educational placement, and in accordance with the federal Individuals with Disabilities Education Act requirement for a free appropriate public education that places pupils in the least restrictive environment appropriate to their needs, whether that is in a public school or a nonpublic school.

(b) It is therefore the intent of the Legislature to do all of the following:

(1) Increase state and local accountability for individuals with exceptional needs placed in nonpublic schools, including those residing in foster care.

(2) Improve state and local monitoring of nonpublic schools.

(3) Ensure that foster children and individuals with exceptional needs who are placed in nonpublic schools are included in the state's testing system in order to monitor and improve their educational outcomes.

(4) Include the nonpublic schools and individuals with exceptional needs who reside in licensed children's institutions in the special education Focused Monitoring and Technical Assistance System at the state and local level.

(5) Require the State Department of Education to add nonpublic schools to the Public School Accountability Act in order to measure pupil performance at nonpublic schools.

(6) Create a funding structure that is neutral in regard to the type of educational placement necessary and best suited for the pupil and that allows public schools to access funding currently available only for nonpublic schools and agencies in serving individuals with exceptional needs in foster care.

SEC. 2. Section 49085 is added to the Education Code, to read:

49085. The department shall ensure that the California School Information Services system meets the needs of pupils in foster care and includes disaggregated data on pupils in foster care.

SEC. 3. Section 52052 of the Education Code is amended to read:

52052. (a) (1) The Superintendent of Public Instruction, with approval of the state board, shall develop an Academic Performance Index (API), to measure the performance of schools, especially the academic performance of pupils, and to demonstrate comparable improvement in academic achievement by all numerically significant ethnic and socioeconomically disadvantaged subgroups within schools.

(2) For purposes of this section, a numerically significant ethnic or socioeconomically disadvantaged subgroup is a subgroup that constitutes at least 15 percent of a school's total pupil population and consists of at least 30 pupils. An ethnic or socioeconomically disadvantaged subgroup of at least 100 pupils constitutes a numerically significant subgroup, even if the subgroup does not constitute 15 percent of the total enrollment at a school. For schools whose API scores are based on test scores of no fewer than 11 and no more than 99 pupils, numerically significant subgroups shall be defined by the Superintendent of Public Instruction, with approval by the state board.

(3) The API shall consist of a variety of indicators currently reported to the State Department of Education including, but not limited to, the results of the achievement test administered pursuant to Section 60640, attendance rates for pupils and certificated school personnel for elementary schools, middle schools, and secondary schools, and the graduation rates for pupils in secondary schools.

(A) The pupil data collected for the API that comes from the achievement test administered pursuant to Sections 60640 and 60644 and the high school exit examination administered pursuant to Section 60851, when fully implemented, shall be disaggregated by special education status, English language learners, socioeconomic status, gender and ethnic group. Only the test scores of pupils who were counted as part of a school district's enrollment in the October California Basic Educational Data System's data collection for the current fiscal year and were continuously enrolled during that year may be included in the test results reported in the API. Results of the achievement test and other tests specified in subdivision (b) shall constitute at least 60 percent of the value of the index.

(B) Before including high school graduation rates and attendance rates in the index, the Superintendent of Public Instruction shall determine the extent to which the data are currently reported to the state and the accuracy of the data.

(C) If the Superintendent of Public Instruction determines that accurate data for these indicators is not available, the Superintendent of Public Instruction shall report to the Governor and the Legislature by September 1, 1999, and recommend necessary action to implement an accurate reporting system.

(b) Pupil scores from the following tests, when available and when found to be valid and reliable for this purpose, shall be incorporated into the API:

(1) The assessment of the applied academic skills matrix test developed pursuant to Section 60604.

(2) The nationally normed test designated pursuant to Section 60642.

(3) The standards-based achievement tests provided for in Section 60642.5.

(4) The high school exit examination.

(c) Based on the API, the Superintendent of Public Instruction shall develop, and the state board shall adopt, expected annual percentage growth targets for all schools based on their API baseline score from the previous year. Schools are expected to meet these growth targets through effective allocation of available resources. For schools below the statewide API performance target adopted by the state board pursuant to subdivision (d), the minimum annual percentage growth target shall be 5 percent of the difference between a school's actual API score and the statewide API performance target, or one API point, whichever is greater. Schools at or above the statewide API performance target shall have, as their growth target, maintenance of their API score above the statewide API performance target. However, the state board may set differential growth targets based on grade level of instruction and may set higher growth targets for the lowest performing schools because they have the greatest room for improvement. To meet its growth target, a school shall demonstrate that the annual growth in its API is equal to or more than its schoolwide annual percentage growth target and that all numerically significant ethnic and socioeconomically disadvantaged subgroups, as defined in subdivision (a), are making comparable improvement.

(d) Upon adoption of state performance standards by the state board, the Superintendent of Public Instruction shall recommend, and the state board shall adopt, a statewide API performance target that includes consideration of performance standards and represents the proficiency level required to meet the state performance target. When the API is fully developed, schools must, at a minimum, meet their annual API growth targets to be eligible for the Governor's Performance Award Program as set forth in Section 52057. The state board may establish additional criteria that schools must meet to be eligible for the Governor's Performance Award Program.

(e) The API shall be used for both of the following:

(1) Measuring the progress of schools selected for participation in the Immediate Intervention/Underperforming Schools Program pursuant to Section 52053.

(2) Ranking all public schools in the state for the purpose of the High Achieving/Improving Schools Program pursuant to Section 52056.

(f) (1) A comprehensive high school, middle school, or elementary school with 11 to 99 valid test scores of pupils who were enrolled in a school within the same school district in the prior fiscal year shall receive an API score with an asterisk that indicates less statistical certainty than API scores based on 100 or more test scores.

(2) A school under the jurisdiction of a county board of education or a county superintendent of schools, a community day school, a nonpublic, nonsectarian school as identified in Section 56366, or an alternative school, including continuation high schools and opportunity schools, may receive an API score if the school has 11 or more valid test scores and the school chooses to receive an API score for at least three years.

(3) A school that participates in the Immediate Intervention/Underperforming Schools Program described in Section 52053 shall receive an API score for the duration of its participation in that program, unless the Superintendent of Public Instruction determines that an API score would be an invalid measure of the school's performance for one or more of the following reasons:

(A) Irregularities in testing procedures occurred.

(B) The data used to calculate the school's API score are not representative of the pupil population at the school.

(C) Significant demographic changes in the school's pupil population render year-to-year comparisons of pupil performance invalid.

(D) The Department of Education discovers or receives information indicating that the integrity of the school's API score has been compromised.

(g) Only schools with 100 or more test scores contributing to the API may be included in the API rankings.

(h) The Superintendent of Public Instruction, with the approval of the state board, shall develop an alternative accountability system for schools with fewer than 100 test scores contributing to the schools' API scores, and for schools under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, nonpublic, nonsectarian schools as identified in Section 56366, and alternative schools serving high-risk pupils, including continuation high schools and opportunity schools.

SEC. 4. Section 56026.3 is added to the Education Code, to read:

56026.3. ''Local educational agency'' means a school district, a county office of education, a charter school participating as a member of a special education local plan area, or a special education local plan area.

SEC. 5. Section 56155.7 is added to the Education Code, to read:

56155.7. A licensed children's institution may not require that a child be identified as an individual with exceptional needs as a condition of admission or residency.

SEC. 6. Section 56157 of the Education Code is amended to read:

56157. (a) In providing appropriate programs to individuals with exceptional needs residing in licensed children's institutions or foster family homes, the local educational agency shall first consider services in programs operated by public education agencies for individuals with exceptional needs. If those programs are not appropriate, special education and related services shall be provided by contract with a nonpublic, nonsectarian school.

(b) If special education and related services are provided by contract with a nonpublic, nonsectarian school, or with a licensed children's institution under this article, the terms of the contract shall be developed in accordance with the provisions of Section 56366.

(c) If an individual with exceptional needs residing in a licensed children's institution or foster family home is placed in a nonpublic, nonsectarian school, the local educational agency that made the placement shall conduct an annual evaluation, in accordance with federal law as part of the annual individualized education program process, of whether the placement is the least restrictive environment that is appropriate to meet the pupil's needs.

(d) If an individual with exceptional needs residing in a licensed children's institution or foster family home is placed in a nonpublic, nonsectarian school, the nonpublic, nonsectarian school shall report to the local educational agency that made the placement, on a quarterly or trimester basis, as appropriate, the educational progress demonstrated by the individual with exceptional needs towards the attainment of the goals and objectives specified in the individual's individualized education program. Pursuant to federal law, no local educational agency shall refer a pupil to a nonpublic, nonsectarian school unless the services required by the individualized education program of the pupil can be assured.

SEC. 7. Section 56341.5 of the Education Code is amended to read:

56341.5. (a) Each local educational agency convening a meeting of the individualized education program team shall take steps to ensure that no less than one of the parents or guardians of the individual with exceptional needs are present at each individualized education program meeting or are afforded the opportunity to participate.

(b) Parents or guardians shall be notified of the individualized education program meeting early enough to ensure an opportunity to attend.

(c) The individualized education program meeting shall be scheduled at a mutually agreed-upon time and place. The notice of the meeting under subdivision (b) shall indicate the purpose, time, and location of the

meeting and who shall be in attendance. Parents or guardians shall also be informed in the notice of the right, pursuant to clause (ii) of paragraph (1) of subsection (b) of Section 300.345 of Title 34 of the Code of Federal Regulations, to bring other people to the meeting who have knowledge or special expertise regarding the individual with exceptional needs.

(d) As part of the participation of an individual with exceptional needs in the individualized education program process, as required by federal law, the individual with exceptional needs shall be allowed to provide confidential input to any representative of his or her individualized education program team.

(e) For an individual with exceptional needs beginning at age 14, or younger, if appropriate, the meeting notice shall also indicate that a purpose of the meeting will be the development of a statement of the transition services needs of the individual required by subdivision (a) of Section 56345.1 and indicate that the individual with exceptional needs is also invited to attend. In accordance with paragraph (3) of subsection (b) of Section 300.345 of the Code of Federal Regulations, for an individual with exceptional needs beginning at 16 years of age or younger, if appropriate, the meeting notice shall also indicate that a purpose of the meeting is the consideration of needed transition services for the individual required by subdivision (b) of Section 56345.1 and indicate that the individual with exceptional needs is invited to attend. If the pupil does not attend the individualized education program meeting, the local educational agency shall take steps to ensure that the pupil's preferences and interests are considered in accordance with paragraph (2) of subsection (b) of Section 300.344 of Title 34 of the Code of Federal Regulations.

(f) The meeting notice shall also identify any other local agency in accordance with paragraph (3) of subsection (b) of Section 300.344 of Title 34 of the Code of Federal Regulations.

(g) If no parent or guardian can attend the meeting, the local educational agency shall use other methods to ensure parent or guardian participation, including individual or conference telephone calls.

(h) A meeting may be conducted without a parent or guardian in attendance if the local educational agency is unable to convince the parent or guardian that he or she should attend. In this event, the local educational agency shall maintain a record of its attempts to arrange a mutually agreed-upon time and place, as follows:

(1) Detailed records of telephone calls made or attempted and the results of those calls.

(2) Copies of correspondence sent to the parents or guardians and any responses received.

(3) Detailed records of visits made to the home or place of employment of the parent or guardian and the results of those visits.

(i) The local educational agency shall take whatever action is necessary to ensure that the parent or guardian understands the proceedings at a meeting, including arranging for an interpreter for parents or guardians with deafness or whose native language is a language other than English.

(j) The local educational agency shall give the parent or guardian a copy of the individualized education program, at no cost to the parent or guardian.

SEC. 8. Section 56366 of the Education Code is amended to read:

56366. It is the intent of the Legislature that the role of a nonpublic, nonsectarian school or agency shall be maintained and continued as an alternative special education service available to a local educational agency and parents.

(a) The master contract for nonpublic, nonsectarian school or agency services shall be developed in accordance with the following provisions:

(1) The master contract shall specify the general administrative and financial, including teacher-to-pupil ratios, between the nonpublic, nonsectarian school or agency and the local educational agency to provide the special education and designated instruction and services, as well as transportation specified in the pupil's individualized education program. The administrative provisions of the contract also shall include procedures for recordkeeping and documentation, and the maintenance of school records by the contracting local educational agency to ensure that appropriate high school graduation credit is received by the pupil. The contract may allow for partial or full-time attendance at the nonpublic, nonsectarian school.

(2) (A) The master contract shall include an individual services agreement for each pupil placed by a local educational agency that will be negotiated for the length of time for which nonpublic, nonsectarian school or agency special education and designated instruction and services are specified in the pupil's individualized education program.

(B) The master contract shall include a description of the process being utilized by the local educational agency to oversee and evaluate placements in nonpublic, nonsectarian schools, as required by federal law. This description shall include a method for evaluating whether the pupil is making appropriate educational progress. At least once every year, the local educational agency shall do all of the following and, to the extent possible, the following shall be conducted as part of the development and provision of an individualized education program:

(i) Evaluate the educational progress of each pupil placed in a nonpublic, nonsectarian school, including all state assessment results pursuant to the requirements of Section 52052.

(ii) Consider whether or not the needs of the pupil continue to be best met at the nonpublic, nonsectarian school and whether changes to the

individualized education program of the pupil are necessary, including whether the pupil may be transitioned to a public school setting. This consideration shall be made at the meeting required by subdivision (d) of Section 56343.

(C) In the case of a nonpublic, nonsectarian school that is owned, operated by, or associated with a licensed children's institution, the master contract shall include a method for evaluating whether the nonpublic, nonsectarian school is in compliance with the mandate set forth in Section 56366.9 of the Education Code and subdivision (b) of Section 1501.1 of the Health and Safety Code.

(3) Changes in educational instruction, services, or placement provided under contract may only be made on the basis of revisions to the pupil's individualized education program.

At any time during the term of the contract or individual services agreement, the parent, the nonpublic, nonsectarian school or agency, or the local educational agency may request a review of the pupil's individualized education program by the individualized education program team. Changes in the administrative or financial agreements of the master contract that do not alter the individual services agreement that outlines each pupil's educational instruction, services, or placement may be made at any time during the term of the contract as mutually agreed by the nonpublic, nonsectarian school or agency and the local educational agency.

(4) The master contract or individual services agreement may be terminated for cause. The cause shall not be the availability of a public class initiated during the period of the contract unless the parent agrees to the transfer of the pupil to a public school program. To terminate the contract either party shall give 20 days' notice.

(5) The nonpublic, nonsectarian school or agency shall provide all services specified in the individualized education program, unless the nonpublic, nonsectarian school or agency and the local educational agency agree otherwise in the contract or individual services agreement.

(6) Related services provided pursuant to a nonpublic, nonsectarian agency master contract shall only be provided during the period of the child's regular or extended school year program, or both, unless otherwise specified by the pupil's individualized education program.

(7) The nonpublic, nonsectarian school or agency shall report attendance of pupils receiving special education and designated instruction and services as defined by Section 46307 for purposes of submitting a warrant for tuition to each contracting local educational agency.

(8) (A) A nonpublic, nonsectarian school, is subject to the alternative accountability system developed pursuant to Section 52052, in the same manner as public schools and each pupil placed in the

nonpublic, nonsectarian school by a local educational agency shall be tested by qualified staff of the nonpublic, nonsectarian school in accordance with that accountability program. The test results shall be reported by the nonpublic, nonsectarian school to the department.

(B) Beginning with the 2006–07 school year testing cycle, each nonpublic, nonsectarian school shall determine its STAR testing period subject to subdivisions (b) and (c) of Section 60640. The nonpublic, nonsectarian school shall determine this period based on completion of 85 percent of the instructional year at that nonpublic, nonsectarian school, plus and minus 10 days, resulting in a 21-day period. Each nonpublic, nonsectarian school shall notify the district of residence of a pupil enrolled in the school of its testing period. Staff at the nonpublic, nonsectarian school who shall administer the assessments shall attend the regular testing training sessions provided by the district of residence. If staff from a nonpublic, nonsectarian school have received training from one local educational agency, that training will be sufficient for all local educational agencies that send pupils to the nonpublic, nonsectarian school. The district of residence shall order testing materials for its pupils that have been placed in the nonpublic, nonsectarian school. The state board shall adopt regulations to facilitate the distribution of and collection of testing materials.

(9) With respect to a nonpublic, nonsectarian school, the school shall prepare a school accountability report card in accordance with Section 33126.

(b) The master contract or individual services agreement shall not include special education transportation provided through the use of services or equipment owned, leased, or contracted by a local educational agency for pupils enrolled in the nonpublic, nonsectarian school or agency unless provided directly or subcontracted by that nonpublic, nonsectarian school or agency.

The superintendent shall withhold 20 percent of the amount apportioned to a local educational agency for costs related to the provision of nonpublic, nonsectarian school or agency placements if the superintendent finds that the local educational agency is in noncompliance with this subdivision. This amount shall be withheld from the apportionments in the fiscal year following the superintendent's finding of noncompliance. The superintendent shall take other appropriate actions to prevent noncompliant practices from occurring and report to the Legislature on those actions.

(c) (1) If the pupil is enrolled in the nonpublic, nonsectarian school or agency with the approval of the local educational agency prior to agreement to a contract or individual services agreement, the local educational agency shall issue a warrant, upon submission of an attendance report and claim, for an amount equal to the number of

creditable days of attendance at the per diem tuition rate agreed upon prior to the enrollment of the pupil. This provision shall be allowed for 90 days during which time the contract shall be consummated.

(2) If after 60 days the master contract or individual services agreement has not been finalized as prescribed in paragraph (1) of subdivision (a), either party may appeal to the county superintendent of schools, if the county superintendent is not participating in the local plan involved in the nonpublic, nonsectarian school or agency contract, or the superintendent, if the county superintendent is participating in the local plan involved in the contract, to negotiate the contract. Within 30 days of receipt of this appeal, the county superintendent or the superintendent, or his or her designee, shall mediate the formulation of a contract which shall be binding upon both parties.

(d) A master contract for special education and related services provided by a nonpublic, nonsectarian school or agency may not be authorized under this part, unless the school or agency has been certified as meeting those standards relating to the required special education and specified related services and facilities for individuals with exceptional needs. The certification shall result in the school or agency receiving approval to educate pupils under this part for a period no longer than 18 months from the date of the initial approval.

(e) By September 30, 1998, the procedures, methods, and regulations for the purposes of contracting for nonpublic, nonsectarian school and agency services pursuant to this section and for reimbursement pursuant to Sections 56836.16 and 56836.20 shall be developed by the superintendent in consultation with statewide organizations representing providers of special education and designated instruction and services. The regulations shall be established by rules and regulations issued by the board.

SEC. 9. Section 56366.1 of the Education Code is amended to read:

56366.1. (a) A nonpublic, nonsectarian school or agency that seeks certification shall file an application with the superintendent on forms provided by the department and include the following information on the application:

(1) A description of the special education and designated instruction and services provided to individuals with exceptional needs if the application is for nonpublic, nonsectarian school certification.

(2) A description of the designated instruction and services provided to individuals with exceptional needs if the application is for nonpublic, nonsectarian agency certification.

(3) A list of appropriately qualified staff, a description of the credential, license, or registration that qualifies each staff member rendering special education or designated instruction and services to do so, and copies of their credentials, licenses, or certificates of registration

with the appropriate state or national organization that has established standards for the service rendered.

(4) An annual operating budget.

(5) Affidavits and assurances necessary to comply with all applicable federal, state, and local laws and regulations which include criminal record summaries required of all nonpublic school or agency personnel having contact with minor children under Section 44237.

(b) (1) The applicant shall provide the special education local plan area in which the applicant is located with the written notification of its intent to seek certification or renewal of its certification. The applicant shall submit on a form, developed by the department, a signed verification by local educational agency representatives that they have been notified of the intent to certify or renew certification. The verification shall include a statement that local educational agency representatives in which the applicant is located have had the opportunity to review the application at least 60 calendar days prior to submission of an initial application to the superintendent, or at least 30 calendar days prior to submission of a renewal application to the superintendent. The signed verification shall provide assurances that local educational agency representatives have had the opportunity to provide input on all required components of the application.

(2) If the applicant has not received a response from the local educational agency 30 days from the date of the return receipt, the applicant may file the application with the superintendent. A copy of the return receipt shall be included with the application as verification of notification efforts to the local educational agency.

(3) The department shall mail renewal application materials to certified nonpublic, nonsectarian schools and agencies at least 120 days prior to the date their current certification expires.

(c) If the applicant operates a facility or program on more than one site, each site shall be certified.

(d) If the applicant is part of a larger program or facility on the same site, the superintendent shall consider the effect of the total program on the applicant. A copy of the policies and standards for the nonpublic, nonsectarian school or agency and the larger program shall be available to the superintendent.

(e) Prior to certification, the superintendent shall conduct an onsite review of the facility and program for which the applicant seeks certification. The superintendent may be assisted by representatives of the special education local plan area in which the applicant is located and a nonpublic, nonsectarian school or agency representative who does not have a conflict of interest with the applicant. The superintendent shall conduct an additional onsite review of the facility and program within four years of the certification effective date, unless the superintendent

conditionally certifies the school or agency or unless the superintendent receives a formal complaint against the school or agency. In the latter two cases, the superintendent shall conduct an onsite review at least annually.

(f) The superintendent shall make a determination on an application within 120 days of receipt of the application and shall certify, conditionally certify, or deny certification to the applicant. If the superintendent fails to take one of these actions within 120 days, the applicant is automatically granted conditional certification for a period terminating on August 31, of the current school year. If certification is denied, the superintendent shall provide reasons for the denial. The superintendent may certify the school or agency for a period of not longer than one year.

(g) Certification becomes effective on the date the nonpublic, nonsectarian school or agency meets all the application requirements and is approved by the superintendent. Certification may be retroactive if the school or agency met all the requirements of this section on the date the retroactive certification is effective. Certification expires on December 31 of the terminating year.

(h) The superintendent shall annually review the certification of each nonpublic, nonsectarian school and agency. For this purpose, a certified school or agency shall annually update its application between August 1 and October 31, unless the board grants a waiver pursuant to Section 56101. The superintendent may conduct an onsite review as part of the annual review.

(i) (1) The superintendent shall conduct an investigation of a nonpublic, nonsectarian school or agency onsite at any time without prior notice if there is substantial reason to believe that there is an immediate danger to the health, safety, or welfare of a child. The superintendent shall document the concern and submit it to the nonpublic, nonsectarian school or agency at the time of the onsite investigation. The superintendent shall require a written response to any noncompliance or deficiency found.

(2) With respect to a nonpublic, nonsectarian school, the superintendent shall conduct an investigation, which may include an unannounced onsite visit, if the superintendent receives evidence of a significant deficiency in the quality of educational services provided or a violation of Section 56366.9 or noncompliance with the policies expressed by subdivision (b) of Section 1501 of the Health and Safety Code by the nonpublic, nonsectarian school. The superintendent shall document the complaint and the results of the investigation and shall provide copies of the documentation to the complainant, the nonpublic, nonsectarian school, and the contracting local educational agency.

(3) Violations or noncompliance documented pursuant to paragraph (1) or (2) shall be reflected in the status of the certification of the school,

at the discretion of the superintendent, pending an approved plan of correction by the nonpublic, nonsectarian school. The department shall retain for a period of 10 years, all violations pertaining to certification of the nonpublic, nonsectarian school or agency.

(j) The superintendent shall monitor the facilities, the educational environment, and the quality of the educational program, including the teaching staff, the credentials authorizing service, the standards-based core curriculum being employed, and the standard focused instructional materials used, of an existing certified nonpublic, nonsectarian school or agency on a three-year cycle, as follows:

(1) The nonpublic, nonsectarian school or agency shall complete a self-review in year one.

(2) The superintendent shall conduct an onsite review of the nonpublic, nonsectarian school or agency in year two.

(3) The superintendent shall conduct a followup visit to the nonpublic, nonsectarian school or agency in year three.

(k) (1) Notwithstanding any other provision of law, the superintendent may not certify a nonpublic, nonsectarian school or agency that proposes to initiate or expand services to pupils currently educated in the immediate prior fiscal year in a juvenile court program, community school pursuant to Section 56150, or other nonspecial education program, including independent study or adult school, or both, unless the nonpublic, nonsectarian school or agency notifies the county superintendent of schools and the special education local plan area in which the proposed new or expanded nonpublic, nonsectarian school or agency is located of its intent to seek certification.

(2) The notification shall occur no later than the December 1 prior to the new fiscal year in which the proposed or expanding school or agency intends to initiate services. The notice shall include the following:

(A) The specific date upon which the proposed nonpublic, nonsectarian school or agency is to be established.

(B) The location of the proposed program or facility.

(C) The number of pupils proposed for services, the number of pupils currently served in the juvenile court, community school, or other nonspecial education program, the current school services including special education and related services provided for these pupils, and the specific program of special education and related services to be provided under the proposed program.

(D) The reason for the proposed change in services.

(E) The number of staff that will provide special education and designated instruction and services and hold a current valid California credential or license in the service rendered or certificate of registration to provide occupational therapy.

(3) In addition to the requirements in subdivisions (a) through (f), inclusive, the superintendent shall require and consider the following in determining whether to certify a nonpublic, nonsectarian school or agency as described in this subdivision:

(A) A complete statement of the information required as part of the notice under paragraph (1).

(B) Documentation of the steps taken in preparation for the conversion to a nonpublic, nonsectarian school or agency, including information related to changes in the population to be served and the services to be provided pursuant to each pupil's individualized education program.

(4) Notwithstanding any other provision of law, the certification becomes effective no earlier than July 1, if the school or agency provided the notification required pursuant to paragraph (1).

(*l*) (1) Commencing July 1, 2006, notwithstanding any other provision of law, the superintendent may not certify or renew the certification of a nonpublic, nonsectarian school or agency, unless all of the following conditions are met:

(A) The entity operating the nonpublic, nonsectarian school or agency maintains separate financial records for each entity that it operates, with each nonpublic, nonsectarian school or agency identified separately from any licensed children's institution that it operates.

(B) The entity submits an annual budget that identifies the projected costs and revenues for each entity and demonstrates that the rates to be charged are reasonable to support the operation of the entity.

(C) The entity submits an entity-wide annual audit that identifies its costs and revenues, by entity, in accordance with generally accepted accounting and auditing principles. The audit shall clearly document the amount of moneys received and expended on the education program provided by the nonpublic, nonsectarian school.

(D) The relationship between various entities operated by the same entity are documented, defining the responsibilities of the entities. The documentation shall clearly identify the services to be provided as part of each program, for example, the residential or medical program, the mental health program, or the educational program. The entity shall not seek funding from a public agency for a service, either separately or as part of a package of services, if the service is funded by another public agency, either separately or as part of a package of services.

(2) For purposes of this section, the term licensed children's institution has the same meaning as it is defined by Section 56155.5.

(m) The school or agency shall be charged a reasonable fee for certification. The superintendent may adjust the fee annually commensurate with the statewide average percentage inflation adjustment computed for revenue limits of unified school districts with

greater than 1,500 units of average daily attendance if the percentage increase is reflected in the district revenue limit for inflation purposes. For purposes of this section, the base fee shall be the following:

(1) 1– 5 pupils	$ 300
(2) 6–10 pupils	500
(3) 11–24 pupils	1,000
(4) 25–75 pupils	1,500
(5) 76 pupils and over	2,000

The school or agency shall pay this fee when it applies for certification and when it updates its application for annual review by the superintendent. The superintendent shall use these fees to conduct onsite reviews, which may include field experts. No fee shall be refunded if the application is withdrawn or is denied by the superintendent.

(n) (1) Notwithstanding any other provision of law, only those nonpublic, nonsectarian schools and agencies that provide special education and designated instruction and services utilizing staff who hold a certificate, permit, or other document equivalent to that which staff in a public school are required to hold in the service rendered are eligible to receive certification. Only those nonpublic, nonsectarian schools or agencies located outside of California that employ staff who hold a current valid credential or license to render special education and related services as required by that state shall be eligible to be certified.

(2) The state board shall develop regulations to implement this subdivision.

(o) In addition to meeting the standards adopted by the board, a nonpublic, nonsectarian school or agency shall provide written assurances that it meets all applicable standards relating to fire, health, sanitation, and building safety.

SEC. 10. Section 56366.5 of the Education Code is amended to read:

56366.5. (a) Upon receipt of a request from a nonpublic, nonsectarian school for payment for services provided under a contract entered into pursuant to Sections 56365 and 56366, the local educational agency shall either (1) send a warrant for the amount requested within 45 days, or (2) notify the nonpublic, nonsectarian school within 10 working days of any reason why the requested payment shall not be paid.

(b) If the local educational agency fails to comply with subdivision (a), the nonpublic, nonsectarian school may require the local educational agency to pay an additional amount of $1^1/_2$ percent of the unpaid balance per month until full payment is made. The local educational agency may not claim reimbursement from the state for the additional amount pursuant to any provision of law, including any provision contained in

Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of the Revenue and Taxation Code.

(c) Any educational funds received from a local educational agency for the educational costs of individuals with exceptional needs it has placed in nonpublic, nonsectarian schools shall be used solely for those purposes and not for the costs of a residential program.

SEC. 11. Section 56366.9 of the Education Code is amended to read:

56366.9. A licensed children's institution at which individuals with exceptional needs reside shall not require as a condition of residential placement that it provide the appropriate educational programs to those individuals through a nonpublic, nonsectarian school or agency owned, operated by, or associated with, a licensed children's institution. Those services may only be provided if the special education local plan area determines that appropriate public alternative educational programs are not available.

SEC. 12. Section 56366.10 is added to the Education Code, to read:

56366.10. In addition to the certification requirements set forth in Sections 56366 and 56366.1, a nonpublic, nonsectarian school that provides special education and related services to an individual with exceptional needs shall certify in writing to the superintendent that it meets all of the following requirements:

(a) It will not accept a pupil with exceptional needs if it cannot provide or ensure the provision of the services outlined in the pupil's individualized education program.

(b) Pupils have access to the following educational materials, services, and programs to the extent available at the local educational agency in which the nonpublic school is located:

(1) Standards-based, core curriculum and the same instructional materials used by the local educational agency in which the nonpublic, nonsectarian school is located.

(2) College preparation courses.

(3) Extracurricular activities, such as art, sports, music, and academic clubs.

(4) Career preparation and vocational training, consistent with transition plans pursuant to state and federal law.

(5) Supplemental assistance, including individual academic tutoring, psychological counseling, and career and college counseling.

(c) The teachers and staff provide academic instruction and support services to pupils with the goal of integrating pupils into the least restrictive environment pursuant to federal law.

(d) The school has and abides by a written policy for pupil discipline which is consistent with state and federal law and regulations.

SEC. 13. Section 56366.11 is added to the Education Code, to read:

56366.11. (a) The department shall implement a program to integrate individuals with exceptional needs placed in nonpublic, nonsectarian schools into public schools, as appropriate. Under the program, a pupil placed in a nonpublic, nonsectarian school and each individual who has the right to make educational decisions for the pupil shall be informed of all their rights relating to the educational placement of the pupil. Existing dispute resolution procedures involving public school enrollment or attendance shall be explained to a pupil placed in nonpublic, nonsectarian school in an age and developmentally appropriate manner. The Foster Child Ombudsman shall disseminate the information on education rights to every foster child residing in a licensed children's institution or foster family home.

(b) Following the development of the next statewide assessment contract, the department shall submit to the Legislature a report on the academic progress of pupils attending nonpublic, nonsectarian schools serving individuals with exceptional needs. Using the results of the two most recent years of the Standardized Testing and Reporting (STAR) Program and the California Alternative Performance Assessment, the report shall summarize by district the achievement of all pupils attending a nonpublic, nonsectarian school. The department shall ensure that the report does not violate the confidentiality of individual pupil scores. In addition, the report shall include an academic performance index score for pupils attending nonpublic, nonsectarian schools for each district using the same procedures as under Section 52052.

SEC. 14. Section 56366.12 is added to the Education Code, to read:

56366.12. A nonpublic, nonsectarian school shall ensure private and confidential communication between a pupil of the nonpublic, nonsectarian school and members of the pupil's individualized education program team, at the pupil's discretion.

SEC. 15. Section 1501.1 of the Health and Safety Code is amended to read:

1501.1. (a) It is the policy of the state to facilitate the proper placement of every child in residential care facilities where the placement is in the best interests of the child. A county may require placement or licensing agencies, or both placement and licensing agencies, to actively seek out-of-home care facilities capable of meeting the varied needs of the child. Therefore, in placing children in out-of-home care, particular attention should be given to the individual child's needs, the ability of the facility to meet those needs, the needs of other children in the facility, the licensing requirements of the facility as determined by the licensing agency, and the impact of the placement on the family reunification plan.

(b) Pursuant to this section, children with varying designations and varying needs, except as provided by statute, may be placed in the same

facility provided the facility is licensed, complies with all licensing requirements relevant to the protection of the child, and has a special permit, if necessary, to meet the needs of each child so placed. A facility may not require, as a condition of placement, that a child be identified as an individual with exceptional needs as defined by Section 56026 of the Education Code.

(c) Neither the requirement for any license nor any regulation shall restrict the implementation of the provisions of this section. Implementation of this section does not obviate the requirement for a facility to be licensed by the department.

(d) Pursuant to this section, children with varying designations and varying needs, except as provided by statute, may be placed in the same licensed foster family home or with a foster family agency for subsequent placement in a certified family home. Children with developmental disabilities, mental disorders, or physical disabilities may be placed in licensed foster family homes or certified family homes, provided that an appraisal of the child's needs and the ability of the receiving home to meet those needs is made jointly by the placement agency and the licensee in the case of licensed foster family homes or the placement agency and the foster family agency in the case of certified family homes, and is followed by written confirmation prior to placement. The appraisal shall confirm that the placement poses no threat to any child in the home.

For purposes of this chapter, the placing of children by foster family agencies shall be referred to as ''subsequent placement'' to distinguish the activity from the placing by public agencies.

SEC. 16. Section 16014 is added to the Welfare and Institutions Code, to read:

16014. (a) It is the intent of the Legislature to maximize federal funding for foster youth services provided by local educational agencies.

(b) The State Department of Education and the State Department of Social Services shall collaborate with the County Welfare Directors Association, representatives from local educational agencies, and representatives of private, nonprofit foster care providers to establish roles and responsibilities, claiming requirements, and sharing of eligibility information eligible for funding under Part E (commencing with Section 470) of Title IV of the federal Social Security Act (42 U.S.C. Sec. 301 et seq.). These state agencies shall also assist counties and local educational agencies in drafting memorandums of understanding between agencies to access funding for case management activities associated with providing foster youth services for eligible children. That federal funding shall be an augmentation to the current program and shall not supplant existing state general funds allocated to this program.

(c) School districts shall be responsible for 100 percent of the nonfederal share of payments received under that act.

SEC. 17. Public schools are encouraged to apply for all available federal, state, and local supplemental sources of funding to accomplish the goals set forth in this act, including funding available for neglected or delinquent pupils who are at risk of dropping out of school, as funded by Section 6421 of Title 20 of the United States Code, funding pursuant to the federal Stewart B. McKinney Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.), Title XIX of the federal Social Security Act (42 U.S.C. Sec. 301 et seq.), and the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.).

SEC. 18. 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 915

An act to amend Section 52052 of the Education Code, relating to school performance.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 2004.]

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

SECTION 1. Section 52052 of the Education Code is amended to read:

52052. (a) (1) By July 1, 1999, the Superintendent of Public Instruction, with approval of the State Board of Education, shall develop an Academic Performance Index (API), to measure the performance of schools, especially the academic performance of pupils.

(2) A school shall demonstrate comparable improvement in academic achievement as measured by the API by all numerically significant pupil subgroups at the school, including:

(A) Ethnic subgroups.

(B) Socioeconomically disadvantaged pupils.

(C) English language learners.

(D) Pupils with disabilities.

(3) (A) For purposes of this section, a numerically significant pupil subgroup is one that meets both of the following criteria:

(i) The subgroup consists of at least 50 pupils each of whom has a valid test score.

(ii) The subgroup constitutes at least 15 percent of a school's total population of pupils who have valid test scores.

(B) If a subgroup does not constitute 15 percent of the school's total population of pupils with valid test scores, the subgroup may constitute a numerically significant pupil subgroup if it has at least 100 valid test scores.

(C) For a school with an API score that is based on no fewer than 11 and no more than 99 pupils with valid test scores, numerically significant subgroups shall be defined by the Superintendent of Public Instruction, with approval by the State Board of Education.

(4) The API shall consist of a variety of indicators currently reported to the department including, but not limited to, the results of the achievement test administered pursuant to Section 60640, attendance rates for pupils in elementary schools, middle schools, and secondary schools, and the graduation rates for pupils in secondary schools.

(A) The pupil data collected for the API that comes from the achievement test administered pursuant to Sections 60640 and 60644 and the high school exit examination administered pursuant to Section 60851, when fully implemented, shall be disaggregated by special education status, English language learners, socioeconomic status, gender and ethnic group. Only the test scores of pupils who were counted as part of the enrollment in the annual California Basic Education Data System's data collection for the current fiscal year and who were continuously enrolled during that year may be included in the test result reports in the school's API. Results of the achievement test and other tests specified in subdivision (b) shall constitute at least 60 percent of the value of the index.

(B) Before including high school graduation rates and attendance rates in the index, the Superintendent of Public Instruction shall determine the extent to which the data are currently reported to the state and the accuracy of the data.

(b) Pupil scores from the following tests, when available and when found to be valid and reliable for this purpose, shall be incorporated into the API:

(1) The assessment of the applied academic skills matrix test developed pursuant to Section 60604.

(2) The nationally normed test designated pursuant to Section 60642.

(3) The standards-based achievement tests provided for in Section 60642.5.

(4) The high school exit examination.

(c) Based on the API, the Superintendent of Public Instruction shall develop, and the State Board of Education shall adopt, expected annual percentage growth targets for all schools based on their API baseline score from the previous year. Schools are expected to meet these growth targets through effective allocation of available resources. For schools below the statewide API performance target adopted by the State Board of Education pursuant to subdivision (d), the minimum annual percentage growth target shall be 5 percent of the difference between a school's actual API score and the statewide API performance target, or one API point, whichever is greater. Schools at or above the statewide API performance target shall have, as their growth target, maintenance of their API score above the statewide API performance target. However, the State Board of Education may set differential growth targets based on grade level of instruction and may set higher growth targets for the lowest performing schools because they have the greatest room for improvement. To meet its growth target, a school shall demonstrate that the annual growth in its API is equal to or more than its schoolwide annual percentage growth target and that all numerically significant pupil subgroups, as defined in subdivision (a), are making comparable improvement.

(d) Upon adoption of state performance standards by the State Board of Education, the Superintendent of Public Instruction shall recommend, and the State Board of Education shall adopt, a statewide API performance target that includes consideration of performance standards and represents the proficiency level required to meet the state performance target. When the API is fully developed, schools must, at a minimum, meet their annual API growth targets to be eligible for the Governor's Performance Award Program as set forth in Section 52057. The State Board of Education may establish additional criteria that schools must meet to be eligible for the Governor's Performance Awards Program.

(e) Beginning in June 2000, the API shall be used for both of the following:

(1) Measuring the progress of schools selected for participation in the Immediate Intervention/Underperforming Schools Program pursuant to Section 52053.

(2) Ranking all public schools in the state for the purpose of the High Achieving/Improving Schools Program pursuant to Section 52056.

(f) (1) A school with 11 to 99 pupils with valid test scores shall receive an API score with an asterisk that indicates less statistical certainty than API scores based on 100 or more test scores.

(2) A school shall annually receive an API score, unless the Superintendent of Public Instruction determines that an API score would

be an invalid measure of the school's performance for one or more of the following reasons:

(A) Irregularities in testing procedures occurred.

(B) The data used to calculate the school's API score are not representative of the pupil population at the school.

(C) Significant demographic changes in the pupil population render year-to-year comparisons of pupil performance invalid.

(D) The department discovers or receives information indicating that the integrity of the API score has been compromised.

(E) Insufficient pupil participation in the assessments included in the API.

(3) If a school has less than 100 pupils with valid test scores, the calculation of the API or adequate yearly progress pursuant to the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.) and federal regulations may be calculated over more than one annual administration of the tests administered pursuant to Sections 60640 and 60644 and the high school exit exam administered pursuant to Section 60851, consistent with regulations adopted by the State Board of Education.

(g) Only schools with 100 or more test scores contributing to the API may be included in the API rankings.

(h) By July 1, 2000, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall develop an alternative accountability system for schools under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, and alternative schools serving high-risk pupils, including continuation high schools and opportunity schools. Schools in the alternative accountability system may receive an API score, but shall not be included in the API rankings.

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CHAPTER 916

An act to amend Section 65400 of, and to repeal Section 65307 of, the Government Code, relating to local planning.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 2004.]

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

SECTION 1. Section 65307 of the Government Code is repealed.

SEC. 2. Section 65400 of the Government Code is amended to read:

65400. After the legislative body has adopted all or part of a general plan, the planning agency shall do both of the following:

(a) Investigate and make recommendations to the legislative body regarding reasonable and practical means for implementing the general plan or element of the general plan, so that it will serve as an effective guide for orderly growth and development, preservation and conservation of open-space land and natural resources, and the efficient expenditure of public funds relating to the subjects addressed in the general plan.

(b) Provide by October 1 of each year an annual report to the legislative body, the Office of Planning and Research, and the Department of Housing and Community Development that includes all of the following:

(1) The status of the plan and progress in its implementation.

(2) The progress in meeting its share of regional housing needs determined pursuant to Section 65584 and local efforts to remove governmental constraints to the maintenance, improvement, and development of housing pursuant to paragraph (3) of subdivision (c) of Section 65583.

The housing element portion of the annual report, as required by this paragraph, shall be prepared through the use of forms and definitions adopted by the Department of Housing and Community Development pursuant to the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2).

(3) The degree to which its approved general plan complies with the guidelines developed and adopted pursuant to Section 65040.2 and the date of the last revision to the general plan.

SEC. 3. It is the intent of the Legislature that the amendments to Section 65400 of the Government Code made by this act correct a

drafting error made in the amendments to that section in Chapter 1235 of the Statutes of 1994 (Assembly Bill 51).

CHAPTER 917

An act to add Section 712.5 to the Fish and Game Code, relating to wildlife resources.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 2004.]

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

SECTION 1. The Legislature finds and declares the following:

(a) California is the winter home to more than 60 percent of the migratory waterfowl of the Pacific Flyway, yet 90 percent of the wetland habitat for these waterfowl is destroyed or adversely impacted.

(b) The loss of wetland habitat in California has resulted in a decline in migratory waterfowl populations.

(c) The significant loss of this unique habitat type has also resulted in dramatic declines in many other fish and wildlife species and has contributed to the listing of over one-half of California's threatened or endangered species.

(d) In 1986, to address the decline of North American waterfowl populations, the federal governments of the United States, Mexico, and Canada agreed to implement the North American Waterfowl Management Plan. When the plan was established, it identified the seven most important waterfowl habitat regions throughout North America that were in greatest need of wetland restoration. California's Central Valley was one of these initial seven priority areas. To carry out the purposes of this plan and address the decline of waterfowl habitat in California's Central Valley, the state and federal resource agencies joined with private conservation groups and established the Central Valley Habitat Joint Venture. More recently, the San Francisco Bay Joint Venture and the Intermountain West Joint Venture were similarly established to address the significant habitat loss in other areas of the state.

(e) The California Department of Fish and Game is a partner in each of these joint ventures and is the lead state resource agency in California's wetland and waterfowl conservation effort. The department has the staff expertise and programs in place to best deliver waterfowl conservation for the state.

(f) The Tobacco Tax and Health Protection Act of 1988 was approved by the voters as Proposition 99. Among other things, that act created a Cigarette and Tobacco Products Surtax Fund in the State Treasury. The fund consists of six separate accounts, including the Public Resources Account, which makes funding available in equal amounts to both programs that protect, restore, enhance, or maintain fish, waterfowl, and wildlife habitat on an equally funded basis and programs that enhance state and local park and recreation resources.

(g) Because the department has statutory powers relating to protecting, restoring, enhancing, and maintaining fish, waterfowl, and wildlife habitat, the department should be the sole agency to expend funds in the Public Resources Account for programs relating to those purposes.

SEC. 2. Section 712.5 is added to the Fish and Game Code, to read:

712.5. (a) Commencing July 1, 2005, any moneys appropriated from the Public Resources Account in the Cigarette and Tobacco Products Surtax Fund for programs to protect, restore, enhance, or maintain waterfowl habitat pursuant to subparagraph (A) of paragraph (5) of subdivision (b) of Section 30122 of the Revenue and Taxation Code, shall be transferred to the department for expenditure for those same purposes.

(b) Commencing July 1, 2005, any moneys appropriated to the department from the California Environmental License Plate Fund described in Section 21191 of the Public Resources Code, in an amount not to exceed the amount transferred to the department pursuant to subdivision (a), shall be transferred to the Department of Parks and Recreation for expenditure for the exclusive trust purposes described in Section 21190.

CHAPTER 918

An act to add Sections 19531.1 and 19614.6 to the Business and Professions Code, relating to horse racing.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 2004.]

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

SECTION 1. Section 19531.1 is added to the Business and Professions Code, to read:

19531.1. Notwithstanding any other provision of law, the board shall not allocate racing dates to a private thoroughbred racing

association in the central or southern zone for the purpose of conducting thoroughbred racing during daytime or nighttime hours if a fair racing association is conducting racing in the central zone on the same dates and if that fair is obligated to make payments on a capital expense loan incurred for the purpose of improving its facilities for horse racing.

SEC. 2. Section 19614.6 is added to the Business and Professions Code, to read:

19614.6. Notwithstanding Section 19614, any county fair in the central zone that conducted fair racing meetings prior to January 1, 1980, commencing with the 2006 racing season, may retain that portion of the license fee applicable to its live racing meeting that exceeds the amount of license fees paid during its 2004 live racing meeting for payment of a capital expense loan incurred for the purpose of improving its facilities for horse racing. The license fee retention shall be applicable only during the loan period, only in an amount equal to the loan payments, and only if all the moneys retained are used to pay off the loan for those capital expenses. Any portion of the license fee in excess of the amount needed to make loan payments pursuant to this section shall be deposited in the Fair and Exposition Fund. However, if after the effective date of this section, the rate of the license fee imposed on fairs is reduced, the county fair may retain that portion of the license fee applicable to its live racing meeting that exceeds the amount of the license fees that would have been paid on its 2004 live racing meeting at the reduced rate.

CHAPTER 919

An act to amend Section 17510.5 of the Business and Professions Code, and to amend Sections 12581, 12582, 12583, 12584, 12585, 12586, 12599, and 12599.1 of, and to add Sections 12599.3, 12599.6, and 12599.7 to, the Government Code, relating to charitable organizations.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 2004.]

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

SECTION 1. Section 17510.5 of the Business and Professions Code is amended to read:

17510.5. (a) The financial records of a soliciting organization shall be maintained on the basis of generally accepted accounting principles as defined by the American Institute of Certified Public Accountants, the

Governmental Accounting Standards Board, or the Financial Accounting Standards Board.

(b) The disclosure requirement of paragraph (7) of subdivision (a) of Section 17510.3 shall be based on the same accounting principles used to maintain the soliciting organization's financial records.

SEC. 2. Section 12581 of the Government Code is amended to read:

12581. This article applies to all charitable corporations, unincorporated associations, trustees, and other legal entities holding property for charitable purposes, commercial fundraisers for charitable purposes, fundraising counsel for charitable purposes, and commercial coventurers, over which the state or the Attorney General has enforcement or supervisory powers. The provisions of this article shall not apply to any committee as defined in Section 82013 which is required to and does file any statement pursuant to the provisions of Article 2 (commencing with Section 84200) of Chapter 4 of Title 9.

SEC. 3. Section 12582 of the Government Code is amended to read:

12582. ''Trustee'' means (a) any individual, group of individuals, corporation, unincorporated association, or other legal entity holding property in trust pursuant to any charitable trust, (b) any corporation or unincorporated association which has accepted property to be used for a particular charitable purpose as distinguished from the general purposes of the corporation or unincorporated association, and (c) a corporation or unincorporated association formed for the administration of a charitable trust, pursuant to the directions of the settlor or at the instance of the trustee.

SEC. 4. Section 12583 of the Government Code is amended to read:

12583. The filing, registration, and reporting provisions of this article do not apply to the United States, any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or to any of their agencies or governmental subdivisions, to any religious corporation sole or other religious corporation or organization that holds property for religious purposes, or to any officer, director, or trustee thereof who holds property for like purposes, to a cemetery corporation regulated under Chapter 19 (commencing with Section 9600) of Division 3 of the Business and Professions Code, or to any committee as defined in Section 82013 that is required to and does file any statement pursuant to Article 2 (commencing with Section 84200) of Chapter 4 of Title 9, or to a charitable corporation or unincorporated association organized and operated primarily as a religious organization, educational institution, hospital, or a health care service plan licensed pursuant to Section 1349 of the Health and Safety Code.

SEC. 5. Section 12584 of the Government Code is amended to read:

12584. The Attorney General shall establish and maintain a register of charitable corporations, unincorporated associations, and trustees subject to this article and of the particular trust or other relationship under which they hold property for charitable purposes and, to that end, may conduct whatever investigation is necessary, and shall obtain from public records, court officers, taxing authorities, trustees, and other sources, whatever information, copies of instruments, reports, and records are needed for the establishment and maintenance of the register.

SEC. 6. Section 12585 of the Government Code is amended to read:

12585. Every charitable corporation, unincorporated association, and trustee subject to this article shall file with the Attorney General a copy of the articles of incorporation, or other instrument that governs the operation of the corporation, unincorporated association, or trust, within 30 days after the corporation, unincorporated association, or trustee initially receives property. A trustee is not required to register as long as the charitable interest in a trust is a future interest, but shall do so within 30 days after any charitable interest in a trust becomes a present interest.

SEC. 7. Section 12586 of the Government Code is amended to read:

12586. (a) Except as otherwise provided and except corporate trustees which are subject to the jurisdiction of the Commissioner of Financial Institutions of the State of California under Division 1 (commencing with Section 99) of the Financial Code or to the Comptroller of the Currency of the United States, every charitable corporation, unincorporated association, and trustee subject to this article shall, in addition to filing copies of the instruments previously required, file with the Attorney General periodic written reports, under oath, setting forth information as to the nature of the assets held for charitable purposes and the administration thereof by the corporation, unincorporated association, or trustee, in accordance with rules and regulations of the Attorney General.

(b) The Attorney General shall make rules and regulations as to the time for filing reports, the contents thereof, and the manner of executing and filing them. The Attorney General may classify trusts and other relationships concerning property held for a charitable purpose as to purpose, nature of assets, duration of the trust or other relationship, amount of assets, amounts to be devoted to charitable purposes, nature of trustee, or otherwise, and may establish different rules for the different classes as to time and nature of the reports required to the ends (1) that he or she shall receive reasonably current, periodic reports as to all charitable trusts or other relationships of a similar nature, which will enable him or her to ascertain whether they are being properly administered, and (2) that periodic reports shall not unreasonably add to the expense of the administration of charitable trusts and similar relationships. The Attorney General may suspend the filing of reports as

to a particular charitable trust or relationship for a reasonable, specifically designated time upon written application of the trustee filed with the Attorney General and after the Attorney General has filed in the register of charitable trusts a written statement that the interests of the beneficiaries will not be prejudiced thereby and that periodic reports are not required for proper supervision by his or her office.

(c) A copy of an account filed by the trustee in any court having jurisdiction of the trust or other relationship, if the account substantially complies with the rules and regulations of the Attorney General, may be filed as a report required by this section.

(d) The first periodic written report, unless the filing thereof is suspended as herein provided, shall be filed not later than four months and 15 days following the close of the first calendar or fiscal year in which property is initially received. If any part of the income or principal of a trust previously established is authorized or required to be applied to a charitable purpose at the time this article takes effect, the first report shall be filed at the close of the calendar or fiscal year in which it was registered with the Attorney General or not later than four months and 15 days following the close of the calendar or fiscal period.

(e) Every charitable corporation, unincorporated association, and trustee required to file reports with the Attorney General pursuant to this section that receives or accrues in any fiscal year gross revenue of two million dollars ($2,000,000) or more, exclusive of grants from, and contracts for services with, governmental entities for which the governmental entity requires an accounting of the funds received, shall do the following:

(1) Prepare annual financial statements using generally accepted accounting principles that are audited by an independent certified public accountant in conformity with generally accepted auditing standards. For any nonaudit services performed by the firm conducting the audit, the firm and its individual auditors shall adhere to the standards for auditor independence set forth in the latest revision of the Government Auditing Standards, issued by the Comptroller General of the United States (the Yellow Book). The Attorney General may, by regulation, prescribe standards for auditor independence in the performance of nonaudit services, including standards different from those set forth in the Yellow Book. If a charitable corporation or unincorporated association that is required to prepare an annual financial statement pursuant to this subdivision is under the control of another organization, the controlling organization may prepare a consolidated financial statement. The audited financial statements shall be available for inspection by the Attorney General and by members of the public no later than nine months after the close of the fiscal year to which the statements relate. A charity shall make its annual audited financial statements

available to the public in the same manner that is prescribed for IRS Form 990 by the latest revision of Section 6104(d) of the Internal Revenue Code and associated regulations.

(2) If it is a corporation, have an audit committee appointed by the board of directors. The audit committee may include persons who are not members of the board of directors, but the member or members of the audit committee shall not include any members of the staff, including the president or chief executive officer and the treasurer or chief financial officer. If the corporation has a finance committee, it must be separate from the audit committee. Members of the finance committee may serve on the audit committee; however, the chairperson of the audit committee may not be a member of the finance committee and members of the finance committee shall constitute less than one-half of the membership of the audit committee. Members of the audit committee shall not receive any compensation from the corporation in excess of the compensation, if any, received by members of the board of directors for service on the board and shall not have a material financial interest in any entity doing business with the corporation. Subject to the supervision of the board of directors, the audit committee shall be responsible for recommending to the board of directors the retention and termination of the independent auditor and may negotiate the independent auditor's compensation, on behalf of the board of directors. The audit committee shall confer with the auditor to satisfy its members that the financial affairs of the corporation are in order, shall review and determine whether to accept the audit, shall assure that any nonaudit services performed by the auditing firm conform with standards for auditor independence referred to in paragraph (1), and shall approve performance of nonaudit services by the auditing firm. If the charitable corporation that is required to have an audit committee pursuant to this subdivision is under the control of another corporation, the audit committee may be part of the board of directors of the controlling corporation.

(f) If, independent of the audit requirement set forth in paragraph (1) of subdivision (e), a charitable corporation, unincorporated association, or trustee required to file reports with the Attorney General pursuant to this section prepares financial statements that are audited by a certified public accountant, the audited financial statements shall be available for inspection by the Attorney General and shall be made available to members of the public in conformity with paragraph (1) of subdivision (e).

(g) The board of directors of a charitable corporation or unincorporated association, or an authorized committee of the board, and the trustee or trustees of a charitable trust shall review and approve the compensation, including benefits, of the president or chief executive

officer and the treasurer or chief financial officer to assure that it is just and reasonable. This review and approval shall occur initially upon the hiring of the officer, whenever the term of employment, if any, of the officer is renewed or extended, and whenever the officer's compensation is modified. Separate review and approval shall not be required if a modification of compensation extends to substantially all employees. If a charitable corporation is affiliated with other charitable corporations, the requirements of this section shall be satisfied if review and approval is obtained from the board, or an authorized committee of the board, of the charitable corporation that makes retention and compensation decisions regarding a particular individual.

SEC. 8. Section 12599 of the Government Code is amended to read:

12599. (a) ''Commercial fundraiser for charitable purposes'' is defined as any individual, corporation, unincorporated association, or other legal entity who for compensation does any of the following:

(1) Solicits funds, assets, or property in this state for charitable purposes.

(2) As a result of a solicitation of funds, assets, or property in this state for charitable purposes, receives or controls the funds, assets, or property solicited for charitable purposes.

(3) Employs, procures, or engages any compensated person to solicit, receive, or control funds, assets, or property for charitable purposes.

A commercial fundraiser for charitable purposes shall include any person, association of persons, corporation, or other entity that obtains a majority of its inventory for sale by the purchase, receipt, or control for resale to the general public, of salvageable personal property solicited by an organization qualified to solicit donations pursuant to Section 148.3 of the Welfare and Institutions Code.

A commercial fundraiser for charitable purposes shall not include a ''trustee'' as defined in Section 12582 or 12583, a ''charitable corporation'' as defined in Section 12582.1, or any employee thereof. A commercial fundraiser for charitable purposes shall not include an individual who is employed by or under the control of a commercial fundraiser for charitable purposes registered with the Attorney General. A commercial fundraiser for charitable purposes shall not include any federally insured financial institution which holds as a depository funds received as a result of a solicitation for charitable purposes.

As used in this section, ''charitable purposes'' includes any solicitation in which the name of any organization of law enforcement personnel, firefighters, or other persons who protect the public safety is used or referred to as an inducement for transferring any funds, assets, or property, unless the only expressed or implied purpose of the solicitation is for the sole benefit of the actual active membership of the organization.

(b) A commercial fundraiser for charitable purposes shall, prior to soliciting any funds, assets, or property, including salvageable personal property, in California for charitable purposes, or prior to receiving and controlling any funds, assets, or property, including salvageable personal property, as a result of a solicitation in this state for charitable purposes, register with the Attorney General's Registry of Charitable Trusts on a registration form provided by the Attorney General. Renewals of registration shall be filed with the Registry of Charitable Trusts by January 15 of each calendar year in which the commercial fundraiser for charitable purposes does business and shall be effective for one year. A registration or renewal fee of two hundred dollars ($200) shall be required for registration of a commercial fundraiser for charitable purposes, and shall be payable by certified or cashier's check to the Attorney General's Registry of Charitable Trusts at the time of registration or renewal. The Attorney General may adjust the annual registration or renewal fee as needed pursuant to this section. The Attorney General's Registry of Charitable Trusts may grant extensions of time to file annual registration as required, pursuant to subdivision (b) of Section 12586.

(c) A commercial fundraiser for charitable purposes shall file with the Attorney General's Registry of Charitable Trusts an annual financial report on a form provided by the Attorney General, accounting for all funds collected pursuant to any solicitation for charitable purposes during the preceding calendar year. The annual financial report shall be filed with the Attorney General's Registry of Charitable Trusts no later than 30 days after the close of the preceding calendar year.

(d) The contents of the forms for annual registration and annual financial reporting by commercial fundraisers for charitable purposes shall be established by the Attorney General in a manner consistent with the procedures set forth in subdivisions (a) and (b) of Section 12586. The annual financial report shall require a detailed, itemized accounting of funds, assets, or property, solicited for charitable purposes on behalf of each charitable organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code or for each charitable purpose during the accounting period, and shall include, among other data, the following information for funds, assets, or property, solicited by the commercial fundraiser for charitable purposes:

(1) Total revenue.

(2) The fee or commission charged by the commercial fundraiser for charitable purposes.

(3) Salaries paid by the commercial fundraiser for charitable purposes to its officers and employees.

(4) Fundraising expenses.

(5) Distributions to the identified charitable organization or purpose.

(6) The names and addresses of any director, officer, or employee of the commercial fundraiser for charitable purposes who is a director, officer, or employee of any charitable organization listed in the annual financial report.

(e) A commercial fundraiser for charitable purposes that obtains a majority of its inventory for sale by the purchase, receipt, or control for resale to the general public, of salvageable personal property solicited by an organization qualified to solicit donations pursuant to Section 148.3 of the Welfare and Institutions Code shall file with the Attorney General's Registry of Charitable Trusts, and not with the sheriff of any county, an annual financial report on a form provided by the Attorney General that is separate and distinct from forms filed by other commercial fundraisers for charitable purposes pursuant to subdivisions (c) and (d).

(f) It shall be unlawful for any commercial fundraiser for charitable purposes to solicit funds in this state for charitable purposes unless the commercial fundraiser for charitable purposes has complied with the registration or annual renewal and financial reporting requirements of this article. Failure to comply with these registration or annual renewal and financial reporting requirements shall be grounds for injunction against solicitation in this state for charitable purposes and other civil remedies provided by law.

(g) A commercial fundraiser for charitable purposes is a constructive trustee for charitable purposes as to all funds collected pursuant to solicitation for charitable purposes and shall account to the Attorney General for all funds. A commercial fundraiser for charitable purposes is subject to the Attorney General's supervision and enforcement over charitable funds and assets to the same extent as a trustee for charitable purposes under this article.

(h) Not less than 10 working days prior to the commencement of each solicitation campaign, event, or service, or not later than commencement of solicitation for solicitations to aid victims of emergency hardship or disasters, a commercial fundraiser for charitable purposes shall file with the Attorney General's Registry of Charitable Trusts a notice on a form prescribed by the Attorney General that sets forth all of the following:

(1) The name, address, and telephone number of the commercial fundraiser for charitable purposes.

(2) The name, address, and telephone number of the charitable organization with whom the commercial fundraiser has contracted.

(3) The fundraising methods to be used.

(4) The projected dates when performance under the contract will commence and terminate.

(5) The name, address, and telephone number of the person responsible for directing and supervising the work of the commercial fundraiser under the contract.

(i) There shall be a written contract between a commercial fundraiser for charitable purposes and a charitable organization for each solicitation campaign, event, or service, that shall be signed by the authorized contracting officer for the commercial fundraiser and by an official of the charitable organization who is authorized to sign by the organization's governing body. The contract shall be available for inspection by the Attorney General and shall contain all of the following provisions:

(1) The legal name and address of the charitable organization as registered with the Registry of Charitable Trusts unless the charitable organization is exempt from registration.

(2) A statement of the charitable purpose for which the solicitation campaign, event, or service is being conducted.

(3) A statement of the respective obligations of the commercial fundraiser and the charitable organization.

(4) If the commercial fundraiser is to be paid a fixed fee, a statement of the fee to be paid to the commercial fundraiser and a good faith estimate of what percentage the fee will constitute of the total contributions received. The contract shall clearly disclose the assumptions upon which the estimate is based, and the stated assumptions shall be based upon all of the relevant facts known to the commercial fundraiser regarding the solicitation to be conducted by the commercial fundraiser.

(5) If a percentage fee is to be paid to the commercial fundraiser, a statement of the percentage of the total contributions received that will be remitted to or retained by the charitable organization, or, if the solicitation involves the sale of goods or services or the sale of admissions to a fundraising event, the percentage of the purchase price that will be remitted to the charitable organization. The stated percentage shall be calculated by subtracting from contributions received and sales receipts not only the commercial fundraiser's fee, but also any additional amounts that the charitable organization is obligated to pay as fundraising costs.

(6) The effective and termination dates of the contract and the date solicitation activity is to commence within the state.

(7) A provision that requires that each contribution in the control or custody of the commercial fundraiser shall in its entirety and within five working days of its receipt comply with either of the following:

(A) Be deposited in an account at a bank or other federally insured financial institution that is solely in the name of the charitable organization and over which the charitable organization has sole control of withdrawals.

(B) Be delivered to the charitable organization in person, by United States express mail, or by another method of delivery providing for overnight delivery.

(8) A statement that the charitable organization exercises control and approval over the content and frequency of any solicitation.

(9) If the commercial fundraiser proposes to make any payment in cash or in kind to any person or legal entity to secure any person's attendance at, or sponsorship, approval, or endorsement of, a charity fundraising event, the maximum dollar amount of those payments shall be set forth in the contract. ''Charity fundraising event'' means any gathering of persons, including, but not limited to, a party, banquet, concert, or show, that is held for the purpose or claimed purpose of raising funds for any charitable purpose or organization.

(10) A provision that the charitable organization has the right to cancel the contract without cost, penalty, or liability for a period of 10 days following the date on which the contract is executed; that the charitable organization may cancel the contract by serving a written notice of cancellation on the commercial fundraiser; that, if mailed, service shall be by certified mail, return receipt requested, and cancellation shall be deemed effective upon the expiration of five calendar days from the date of mailing; that any funds collected after effective notice that the contract has been canceled shall be deemed to be held in trust for the benefit of the charitable organization without deduction for costs or expenses of any nature; and that the charitable organization shall be entitled to recover all funds collected after the date of cancellation.

(11) A provision that, following the initial 10-day cancellation period, the charitable organization may terminate the contract by giving 30 days' written notice; that, if mailed, service of the notice shall be by certified mail, return receipt requested, and shall be deemed effective upon the expiration of five calendar days from the date of mailing; and that, in the event of termination under this subdivision, the charitable organization shall be liable for services provided by the commercial fundraiser up to 30 days after the effective service of the notice.

(12) A provision that, following the initial 10-day cancellation period, the charitable organization may terminate the contract at any time upon written notice, without payment or compensation of any kind to the commercial fundraiser, if the commercial fundraiser or its agents, employees, or representatives (A) make any material misrepresentations in the course of solicitations or with respect to the charitable organization, (B) are found by the charitable organization to have been convicted of a crime arising from the conduct of a solicitation for a charitable organization or purpose punishable as a misdemeanor or a felony, or (C) otherwise conduct fundraising activities in a manner that

causes or could cause public disparagement of the charitable organization's good name or good will.

(13) Any other information required by the regulations of the Attorney General.

(j) It shall be unlawful for a commercial fundraiser for charitable purposes to not disclose the percentage of total fundraising expenses of the fundraiser upon receiving a written or oral request from a person solicited for a contribution for a charitable purpose. ''Percentage of total fundraising expenses,'' as used in this section, means the ratio of the total expenses of the fundraiser to the total revenue received by the fundraiser for the charitable purpose for which funds are being solicited, as reported on the most recent financial report filed with the Attorney General's Registry of Charitable Trusts. A commercial fundraiser shall disclose this information in writing within five working days from receipt of a request by mail or facsimile. A commercial fundraiser shall orally disclose this information immediately upon a request made in person or in a telephone conversation and shall follow this response with a written disclosure within five working days. Failure to comply with the requirements of this subdivision shall be grounds for an injunction against solicitation in this state for charitable purposes and other civil remedies provided by law.

(k) If the Attorney General issues a report to the public containing information obtained from registration forms or financial report forms filed by commercial fundraisers for charitable purposes, there shall be a separate section concerning commercial fundraisers for charitable purposes that obtain a majority of their inventory for sale by the purchase, receipt, or control for resale to the general public, of salvageable personal property solicited \by an organization qualified to solicit donations pursuant to Section 148.3 of the Welfare and Institutions Code. The report shall include an explanation of the distinctions between these thrift store operations and other types of commercial fundraising.

(*l*) No person may act as a commercial fundraiser for charitable purposes if that person, any officer or director of that person's business, any person with a controlling interest in the business, or any person the commercial fundraiser employs, engages, or procures to solicit for compensation, has been convicted by a court of any state or the United States of a crime arising from the conduct of a solicitation for a charitable organization or purpose punishable as a misdemeanor or felony.

(m) A commercial fundraiser for charitable purposes shall not solicit in the state on behalf of a charitable organization unless that charitable organization is registered or is exempt from registration with the Attorney General's Registry of Charitable Trusts.

(n) If any provision of this section or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or application of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

SEC. 9. Section 12599.1 of the Government Code is amended to read:

12599.1. (a) ''Fundraising counsel for charitable purposes'' is defined as any individual, corporation, unincorporated association, or other legal entity who is described by all of the following:

(1) For compensation plans, manages, advises, counsels, consults, or prepares material for, or with respect to, the solicitation in this state of funds, assets, or property for charitable purposes.

(2) Does not solicit funds, assets, or property for charitable purposes.

(3) Does not receive or control funds, assets, or property solicited for charitable purposes in this state.

(4) Does not employ, procure, or engage any compensated person to solicit, receive, or control funds, assets, or property for charitable purposes.

(b) ''Fundraising counsel for charitable purposes'' does not include any of the following:

(1) An attorney, investment counselor, or banker who in the conduct of that person's profession advises a client when actually engaged in the giving of legal, investment, or financial advice.

(2) A trustee as defined in Section 12582 or 12583.

(3) A charitable corporation as defined in Section 12582.1, or any employee thereof.

(4) A person employed by or under the control of a fundraising counsel for charitable purposes, as defined in subdivision (a).

(5) A person, corporation, or other legal entity, engaged as an independent contractor directly by a trustee or a charitable corporation, that prints, reproduces, or distributes written materials prepared by a trustee, a charitable corporation, or any employee thereof, or that performs artistic or graphic services with respect to written materials prepared by a trustee, a charitable corporation, or any employee thereof, provided that the independent contractor does not perform any of the activities described in paragraph (1) of subdivision (a).

(6) A person whose total annual gross compensation for performing any activity described in paragraph (1) of subdivision (a) does not exceed twenty-five thousand dollars ($25,000).

(c) A fundraising counsel for charitable purposes shall, prior to managing, advising, counseling, consulting, or preparing material for, or with respect to, the solicitation in this state of funds, assets, or property for charitable purposes, register with the Attorney General's

Registry of Charitable Trusts on a registration form provided by the Attorney General. Renewals of registration shall be filed with the Registry of Charitable Trusts by January 15 of each calendar year in which the fundraising counsel for charitable purposes does business and shall be effective for one year.

A registration or renewal fee of two hundred dollars ($200) shall be required for registration of a fundraising counsel for charitable purposes, and shall be payable by certified or cashier's check to the Attorney General's Registry of Charitable Trusts at the time of registration and renewal. The Attorney General may adjust the annual registration or renewal fee as needed pursuant to this section. The Attorney General's Registry of Charitable Trusts may grant extensions of time to file annual registration as required, pursuant to subdivision (b) of Section 12586.

(d) A fundraising counsel for charitable purposes shall file annually with the Attorney General's Registry of Charitable Trusts on a form provided by the Attorney General, a report listing each person, corporation, unincorporated association, or other legal entity for whom the fundraising counsel has performed any services described in paragraph (1) of subdivision (a), and a statement certifying that the fundraising counsel had a written contract with each listed person, corporation, unincorporated association, or other legal entity that complied with the requirements of subdivision (f).

(e) Not less than 10 working days prior to the commencement of the performance of any service for a charitable organization by a fundraising counsel for charitable purposes, or not later than commencement of solicitation for solicitations to aid victims of emergency hardship or disasters, the fundraising counsel shall file with the Attorney General's Registry of Charitable Trusts a notice on a form prescribed by the Attorney General that sets forth all of the following:

(1) The name, address, and telephone number of the fundraising counsel for charitable purposes.

(2) The name, address, and telephone number of the charitable organization with whom the fundraising counsel has contracted.

(3) The projected dates when performance under the contract will commence and terminate.

(4) The name, address, and telephone number of the person responsible for directing and supervising the work of the fundraising counsel under the contract.

(f) There shall be a written contract between a fundraising counsel for charitable purposes and a charitable organization for each service to be performed by the fundraising counsel for the charitable organization, that shall be signed by the authorized contracting officer for the fundraising counsel and by an official of the charitable organization who is authorized to sign by the organization's governing body. The contract

shall be available for inspection by the Attorney General and shall contain all of the following provisions:

(1) The legal name and address of the charitable organization as registered with the Registry of Charitable Trusts unless the charitable organization is exempt from registration.

(2) A statement of the charitable purpose for which the solicitation campaign is being conducted.

(3) A statement of the respective obligations of the fundraising counsel and the charitable organization.

(4) A clear statement of the fees and any other form of compensation, including commissions and property, that will be paid to the fundraising counsel.

(5) The effective and termination dates of the contract and the date services will commence with respect to solicitation in this state of contributions for a charitable organization.

(6) A statement that the fundraising counsel will not at any time solicit funds, assets, or property for charitable purposes, receive or control funds, assets, or property solicited for charitable purposes, or employ, procure, or engage any compensated person to solicit, receive, or control funds, assets, or property for charitable purposes.

(7) A statement that the charitable organization exercises control and approval over the content and frequency of any solicitation.

(8) A provision that the charitable organization has the right to cancel the contract without cost, penalty, or liability for a period of 10 days following the date on which the contract is executed; that the charitable organization may cancel the contract by serving a written notice of cancellation on the fundraising counsel; and that, if mailed, service shall be by certified mail, return receipt requested, and cancellation shall be deemed effective upon the expiration of five calendar days from the date of mailing.

(9) A provision that, following the initial 10-day cancellation period, the charitable organization may terminate the contract by giving 30 days' written notice; that, if mailed, service of the notice shall be by certified mail, return receipt requested, and shall be deemed effective upon the expiration of five calendar days from the date of mailing; and that, in the event of termination under this subdivision, the charitable organization shall be liable for services provided by the fundraising counsel to the effective date of the termination.

(10) Any other information required by the regulations of the Attorney General.

(g) It shall be unlawful for any fundraising counsel for charitable purposes to manage, advise, counsel, consult, or prepare material for, or with respect to, the solicitation in this state of funds, assets, or property for charitable purposes unless the fundraising counsel for charitable

purposes has complied with the registration or annual renewal and financial reporting requirements of this article.

(h) A fundraising counsel for charitable purposes is subject to the Attorney General's supervision and enforcement to the same extent as a trustee for charitable purposes under this article.

(i) If any provision of this section or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or application of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

SEC. 10. Section 12599.3 is added to the Government Code, to read:

12599.3. (a) A contract between a charitable organization and a commercial fundraiser for charitable purposes or fundraising counsel for charitable purposes shall be voidable by the charitable organization unless the commercial fundraiser or the fundraising counsel is registered with the Attorney General's Registry of Charitable Trusts prior to the commencement of the solicitation.

(b) Whenever a charitable organization contracts with a commercial fundraiser for charitable purposes or fundraising counsel for charitable purposes, the charitable organization shall have the right to cancel the contract without cost, penalty, or liability for a period of 10 days following the date on which the contract is executed. Any provision in the contract that is intended to waive this right of cancellation shall be void and unenforceable.

(c) A charitable organization may cancel a contract pursuant to subdivision (b) by serving a written notice of cancellation on the fundraising counsel or commercial fundraiser. If mailed, service shall be by certified mail, return receipt requested, and cancellation shall be deemed effective upon the expiration of five calendar days from the date of mailing. The notice shall be sufficient if it indicates that the charitable organization does not intend to be bound by the contract.

(d) Whenever a charitable organization cancels a contract pursuant to this section, it shall mail a duplicate copy of the notice of cancellation to the Attorney General's Registry of Charitable Trusts.

(e) Any funds collected after effective notice that a contract has been canceled shall be deemed to be held in trust for the benefit of the charitable organization without deduction for costs or expenses of any nature. A charitable organization shall be entitled to recover all funds collected after the date of cancellation.

(f) Following the initial 10-day cancellation period, a charitable organization may terminate a contract with a commercial fundraiser for charitable purposes or a fundraising counsel for charitable purposes by giving 30 days' written notice. If mailed, service of the notice shall be by certified mail, return receipt requested, and shall be deemed effective

upon the expiration of five calendar days from the date of mailing. In the event of termination under this subdivision, the charitable organization shall be liable for services provided by the commercial fundraiser or fundraising counsel up to 30 days after the effective service of the notice.

(g) Following the initial 10-day cancellation period, a charitable organization may terminate at any time upon written notice a contract with a commercial fundraiser for charitable purposes or a fundraising counsel for charitable purposes, without payment or compensation of any kind to the commercial fundraiser or fundraising counsel, if the commercial fundraiser or the fundraising counsel, or their agents, employees, or representatives (1) make any material misrepresentations in the course of solicitations or with respect to the charitable organization, (2) are found by the charitable organization to have been convicted of a crime arising from the conduct of a solicitation for a charitable organization or purpose that is punishable as a felony or misdemeanor, or (3) otherwise conduct fundraising activities in a manner that causes or could cause public disparagement of the charitable organization's good name or good will.

SEC. 11. Section 12599.6 is added to the Government Code, to read:

12599.6. (a) Charitable organizations and commercial fundraisers for charitable purposes shall not misrepresent the purpose of the charitable organization or the nature or purpose or beneficiary of a solicitation. A misrepresentation may be accomplished by words or conduct or failure to disclose a material fact.

(b) A charitable organization must establish and exercise control over its fundraising activities conducted for its benefit, including approval of all written contracts and agreements, and must assure that fundraising activities are conducted without coercion.

(c) A charitable organization shall not enter into any contract or agreement with, or employ, any commercial fundraiser for charitable purposes or fundraising counsel for charitable purposes unless that commercial fundraiser or fundraising counsel is registered with the Attorney General's Registry of Charitable Trusts or, if not registered, agrees to register prior to the commencement of any solicitation.

(d) A charitable organization shall not enter into any contract or agreement with, or raise any funds for, any charitable organization required to be registered pursuant to this act unless that charitable organization is registered with the Attorney General's Registry of Charitable Trusts or, if not registered, agrees to register prior to the commencement of the solicitation.

(e) Each contribution in the control or custody of a commercial fundraiser for charitable purposes shall in its entirety and within five working days of receipt (1) be deposited in an account at a bank or other federally insured financial institution that is solely in the name of the

charitable organization on whose behalf the contribution was solicited and over which the charitable organization has sole control of withdrawals or, (2) be delivered to the charitable organization in person, by Express Mail, or by another method of delivery providing for overnight delivery.

(f) Regardless of injury, the following acts and practices are prohibited in the planning, conduct, or execution of any solicitation or charitable sales promotion:

(1) Operating in violation of, or failing to comply with, any of the requirements of this act or regulations or orders of the Attorney General, or soliciting contributions after registration with the Attorney General's Registry of Charitable Trusts has expired or has been suspended or revoked.

(2) Using any unfair or deceptive acts or practices or engaging in any fraudulent conduct that creates a likelihood of confusion or misunderstanding.

(3) Using any name, symbol, emblem, statement, or other material stating, suggesting, or implying to a reasonable person that the contribution is to or for the benefit of a particular charitable organization when that is not the fact.

(4) Misrepresenting or misleading anyone in any manner to believe that the person on whose behalf a solicitation or charitable sales promotion is being conducted is a charitable organization or that the proceeds of the solicitation or charitable sales promotion will be used for charitable purposes when that is not the fact.

(5) Misrepresenting or misleading anyone in any manner to believe that any other person sponsors, endorses, or approves a charitable solicitation or charitable sales promotion when that person has not given consent in writing to the use of the person's name for these purposes.

(6) Misrepresenting or misleading anyone in any manner to believe that goods or services have endorsement, sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have or that a person has endorsement, sponsorship, approval, status, or affiliation that the person does not have.

(7) Using or exploiting the fact of registration with the Attorney General's Registry of Charitable Trusts so as to lead any person to believe that the registration in any manner constitutes an endorsement or approval by the Attorney General. The use of the following statement is not prohibited:

''The official registration and financial information regarding (insert the legal name of the charity as registered with the Registry of Charitable Trusts) can be obtained from the Attorney General's Web site at http://caag.state.ca.us/charities/. Registration does not imply endorsement.''

(8) Representing directly or by implication that a charitable organization will receive an amount greater than the actual net proceeds reasonably estimated to be retained by the charity for its use.

(9) With respect to solicitations by commercial fundraisers for charitable purposes on behalf of law enforcement personnel, firefighters, or other persons who protect the public safety, issuing, offering, giving, delivering, or distributing any honorary membership cards, courtesy cards, or similar cards, or any stickers, emblems, plates, or other items that could be used for display on a motor vehicle, and that suggest affiliation with, or endorsement by any public safety personnel or a group comprising such personnel.

(10) (A) Soliciting for advertising to appear in a for-profit publication that relates to, purports to relate to, or that could reasonably be construed to relate to, any charitable purpose without making the following disclosures at the time of solicitation:

(i) The publication is a for-profit, commercial enterprise.

(ii) The true name of the solicitor and the fact that the solicitor is a professional solicitor.

(iii) The publication is not affiliated with or sponsored by any charitable organization.

(B) Where a sale of advertising has been made, the solicitor, prior to accepting any money for the sale, shall make to the purchaser the disclosures required by subparagraph (A) in written form and in conspicuous type.

(11) Representing that any part of the contributions solicited by a charitable organization will be given or donated to any other charitable organization unless that organization has consented in writing to the use of its name prior to the solicitation. The written consent shall be signed by one authorized officer, director, or trustee of the charitable organization.

(12) Representing that tickets to events will be donated for use by another, unless all of the following requirements have been met:

(A) The charitable organization or commercial fundraiser has commitments, in writing, from charitable organizations stating that they will accept donated tickets and specifying the number of tickets they are willing to accept.

(B) The donated tickets will not, when combined with other ticket donations, exceed either of the following:

(i) The number of ticket commitments the charitable organization or commercial fundraiser has received from charitable organizations.

(ii) The total attendance capacity of the site of the event.

(g) A ticket commitment from a charitable organization alone, as described in subdivision (i), does not constitute written consent to use of the organization's name in the solicitation campaign.

SEC. 12. Section 12599.7 is added to the Government Code, to read:

12599.7. (a) A commercial fundraiser for charitable purposes shall maintain during each solicitation campaign and for not less than 10 years following the completion of each solicitation campaign records, including any electronic records, containing the following information, which shall be available for inspection upon demand by the Attorney General:

(1) The date and amount of each contribution received as a result of the solicitation campaign and, for noncash contributions, the name and mailing address of each contributor.

(2) The name and residence address of each employee, agent, or other person involved in the solicitation campaign.

(3) Records of all revenue received and expenses incurred in the course of the solicitation campaign.

(4) For each account into which the commercial fundraiser deposited revenue from the solicitation campaign, the account number and the name and location of the bank or other financial institution in which the account was maintained.

(b) If a commercial fundraiser for charitable purposes sells tickets to an event and represents that tickets will be donated for use by another, the commercial fundraiser shall maintain for not less than 10 years following the completion of the event records containing the following information, which shall be available for inspection upon demand by the Attorney General:

(1) The number of tickets purchased and donated by each contributor.

(2) The name and address of all organizations receiving donated tickets for use by others, including the number of tickets received by each organization.

SEC. 13. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 920

An act to amend Section 11629.85 of the Insurance Code, and to amend, repeal, and add Section 4000.38 of, and to add Section 16058 to, the Vehicle Code, relating to vehicles.

[Approved by Governor September 29, 2004. Filed with
Secretary of State September 30, 2004.]

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

SECTION 1. Section 11629.85 of the Insurance Code is amended to read:

11629.85. (a) On or before February 1 of each year, the commissioner shall prepare and propose a plan to the Senate and Assembly Committees on Insurance setting forth the methods the commissioner intends to implement to inform households eligible for the pilot program about the availability of low-cost automobile insurance. To be eligible for funding through the budget process, the plan shall be reviewed by the Senate and Assembly Committees on Insurance. The information required under subdivision (c) shall also be provided to the Senate and Assembly Committees on Transportation.

(b) The plan shall include, at a minimum, a brief description of methods proposed to be used, anticipated costs, sources of revenue, goals, targets, objectives, and a justification of the proposed methods. The plan shall also explain how the department proposes to work in cooperation with the California Automobile Assigned Risk Plan, the social service departments of the Counties of Los Angeles and San Francisco, the Department of Motor Vehicles, and community-based organizations in order to inform eligible households of the existence of the pilot program.

(c) The plan shall also include all of the following:

(1) The commissioner's determination regarding whether the plan has been successful, based on the criteria specified in subdivision (d), and an explanation regarding that success or lack thereof.

(2) Structural characteristics of the plan that may require statutory revision in order for the plan to succeed or to improve upon existing success.

(3) Impediments to success of the plan that can reasonably be overcome by revision to the strategies adopted by the department and others.

(4) Administrative costs incurred by the low-cost automobile insurance program and participants in the program.

(d) The pilot program is successful if the following occur:

(1) The plan generated sufficient premiums to pay for the costs of medical care and property losses covered under the policy during the year.

(2) The plan served the public purpose of offering access to automobile insurance to otherwise underserved communities in the pilot program areas.

(3) The plan offered access to automobile insurance to previously uninsured motorists seeking affordable coverage in the pilot program areas.

(e) Any written or oral advertisements, including, but not limited to, paid or unpaid commercial or noncommercial advertising, by the department with reference to the low-cost automobile insurance pilot program shall reference the department and shall not reference the commissioner by name or office, or include the commissioner's voice, image, or likeness. The department shall not participate with any nongovernmental entity that produces or intends to produce advertisements or educational material that include the name of the commissioner or his or her voice, image or likeness, and that are intended to make eligible households aware of the existence of low-cost automobile insurance.

SEC. 2. Section 4000.38 of the Vehicle Code is amended to read:

4000.38. (a) The department may suspend, cancel, or revoke the registration of a vehicle when it determines that either of the following circumstances has occurred:

(1) The registration was obtained by providing false evidence of financial responsibility to the department.

(2) Upon notification by an insurance company that the required coverage has been canceled and a sufficient period of time has elapsed since the cancellation notification, as determined by the department, for replacement coverage to be processed and received by the department.

(b) Prior to suspending, canceling, or revoking the registration of a vehicle, the department shall notify the vehicle owner of its intent to suspend, cancel, or revoke the registration, and shall provide the vehicle owner a reasonable time, not less than 45 days in cases under paragraph (2) of subdivision (a), to provide evidence of financial responsibility or to establish that the vehicle is not being operated.

(c) Notwithstanding any other provision of this code, before a registration is reinstated after suspension, cancellation, or revocation, there shall, in addition to any other fees required by this code, be paid to the department a fee sufficient to pay the cost of the reissuance as determined by the department.

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

SEC. 3. Section 4000.38 is added to the Vehicle Code, to read:

4000.38. (a) The department shall suspend, cancel, or revoke the registration of a vehicle when it determines that any of the following circumstances has occurred:

(1) The registration was obtained by providing false evidence of financial responsibility to the department.

(2) Upon notification by an insurance company that the required coverage has been canceled and a sufficient period of time has elapsed since the cancellation notification, as determined by the department, for replacement coverage to be processed and received by the department.

(3) Evidence of financial responsibility has not been submitted to the department within 30 days of the issuance of a registration certificate for the original registration or transfer of registration of a vehicle.

(b) (1) Prior to suspending, canceling, or revoking the registration of a vehicle, the department shall notify the vehicle owner of its intent to suspend, cancel, or revoke the registration, and shall provide the vehicle owner a reasonable time, not less than 45 days in cases under paragraph (2) of subdivision (a), to provide evidence of financial responsibility or to establish that the vehicle is not being operated.

(2) For the duration of the low-cost automobile insurance pilot programs established under Sections 11629.7 and 11629.9 of the Insurance Code, the department shall provide residents of Los Angeles County and San Francisco County with information on the notification document, in plain, bold type not less than 12 point in size, and in both English and Spanish, stating the following:

''A program offering affordable automobile insurance to low-income households in Los Angeles County and San Francisco County has been established. To determine if you are eligible for this insurance, call (insert toll-free phone number for the California Automobile Assigned Risk Plan or its successor). This call is free to you and may be made during normal business hours, Monday through Friday, except holidays.''

(c) Notwithstanding any other provision of this code, before a registration is reinstated after suspension, cancellation, or revocation, there shall be paid to the department, in addition to any other fees required by this code, a fee sufficient to pay the cost of the reissuance as determined by the department.

(d) This section shall become operative on January 1, 2006.

SEC. 4. Section 16058 is added to the Vehicle Code, to read:

16058. (a) On or before July 1, 2005, each insurer that issues private passenger automobile liability insurance policies and coverages, or private passenger automobile policies and coverages issued by an automobile assigned risk plan, as those policies, coverages, and plans are described in paragraph (1) of subdivision (a) of Section 4000.37 shall advise the department of the electronic method to be used for reporting liability insurance information under subdivisions (b), (c), and (d). The department shall establish an electronic conversion schedule.

(b) On or before January 1, 2006, each insurer shall report all existing motor vehicle liability insurance policies or coverages described in subdivision (a) issued for vehicles registered in this state or to

policyholders with a California address, to the department in a manner that preserves existing reporting relationships and that allows for smaller insurers and those with unusual circumstances to be accommodated, consistent with the intent of this section. Consistent with the intent of this section, a small insurer or those with unusual circumstances may be accommodated by, among other methods, an extension of the mandatory electronic reporting deadline set forth in this section to no later than July 1, 2006.

(c) On and after January 1, 2006, each insurer shall electronically report to the department all issued motor vehicle liability policies or coverages, as described in subdivision (a), within 30 days of the effective date of the coverage.

(d) On and after January 1, 2006, an insurer shall electronically report to the department the termination of a reported policy or any change of information previously reported under subdivision (b) or (c), as specified by the department, within 45 days of the date of termination or change. This report shall include the effective date of the termination, amendment, or cancellation and any other information that does not exceed that required under subdivision (c).

(e) (1) Those persons with alternative forms of financial responsibility pursuant to subdivision (a), (c), (d), or (e) of Section 16021 shall provide satisfactory evidence of that responsibility as determined by the department.

(2) In addition, the department shall establish an alternative procedure for establishment of satisfactory evidence of financial responsibility to permit the timely renewal of vehicle registration when the electronic data has not been updated due to circumstances beyond the vehicle owner's immediate control. Those circumstances may include, but are not limited to, a vehicle identification error in either the department's or the insurer's records or insurance purchased too recently to have been electronically transmitted to the department. Whenever this alternative procedure is used, the department shall, subsequent to the issuance of the registration certificate and indicia, contact the insurer to obtain electronic data pursuant to subdivision (c).

(f) The department shall adopt regulations for reporting insurance information, including, but not limited to, establishing acceptable timeframes and approved methods for reporting information.

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 921

An act to amend Sections 5000, 5015.6, 5076, 5100, 5109, 5134, and 22253.2 of, to amend, repeal, and add Sections 5050 and 5088 of, to add Sections 5025.2, 5025.3, 5063.3, and 22252.1 to, and to add Article 5.1 (commencing with Section 5096) and Article 6.5 (commencing with Section 5116) to Chapter 1 of Division 3 of, the Business and Professions Code, relating to professions and vocations, and making an appropriation therefor.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 2004.]

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

SECTION 1. Section 5000 of the Business and Professions Code is amended to read:

5000. There is in the Department of Consumer Affairs the California Board of Accountancy, which consists of 15 members, seven of whom shall be licensees, and eight of whom shall be public members who shall not be licentiates of the board or registered by the board. The board has the powers and duties conferred by this chapter.

The Governor shall appoint four of the public members, and the seven licensee members as provided in this section. The Senate Rules Committee and the Speaker of the Assembly shall each appoint two public members. In appointing the seven licensee members, the Governor shall appoint members representing a cross section of the accounting profession with at least two members representing a small public accounting firm. For the purposes of this chapter, a small public accounting firm shall be defined as a professional firm that employs a total of no more than four licensees as partners, owners, or full-time employees in the practice of public accountancy within the State of California.

This section shall become inoperative on July 1, 2011, and as of January 1, 2012, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2012, deletes or extends the dates on which this section becomes inoperative and is repealed. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473). However, the review of the board shall be limited to reports or studies specified in this chapter and those

issues identified by the Joint Committee on Boards, Commissions, and Consumer Protection and the board regarding the implementation of new licensing requirements.

SEC. 2. Section 5015.6 of the Business and Professions Code is amended to read:

5015.6. 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, 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. 3. Section 5025.2 is added to the Business and Professions Code, to read:

5025.2. (a) The Legislature finds that there are occasions when the California Board of Accountancy urgently requires additional expenditure authority in order to fund unanticipated enforcement and litigation activities. Without sufficient expenditure authority to obtain the necessary additional resources for urgent litigation and enforcement matters, the board is unable to adequately protect the public. Therefore, it is the intent of the Legislature that, apart from, and in addition to, the expenditure authority that may otherwise be established, the California Board of Accountancy shall be given the increase in its expenditure authority in any given current fiscal year that is authorized by the Department of Finance pursuant to the provisions of subdivision (b) of this section, for costs and services in urgent litigation and enforcement matters, including, but not limited to, costs for professional and consulting services and for the services of the Attorney General and the Office of Administrative Hearings.

(b) Notwithstanding Control Section 27.00 of the annual Budget Act, Section 11006 of the Government Code, and the amount listed in the annual Budget Act for expenditure, the Department of Finance shall authorize up to two million dollars ($2,000,000) in additional expenditures for the California Board of Accountancy upon a showing by the board that those funds are necessary for public protection and that the shortfall was not anticipated. These additional expenditures shall be payable from the Accountancy Fund for purposes of the board's litigation or enforcement activities in any given current fiscal year.

SEC. 4. Section 5025.3 is added to the Business and Professions Code, to read:

5025.3. (a) Whenever the board enters into a contract for litigation or enforcement purposes, including, but not limited to, contracts pursuant to Section 5025.1, funds may be encumbered in the fiscal year

the contract is executed and expended at any time during the subsequent 24 months commencing with the last day of the fiscal year in which the contract is executed.

(b) Notwithstanding Section 13340 of the Government Code, funds encumbered for a contract pursuant to subdivision (a) of this section are continuously appropriated without regard to fiscal year, however, the appropriation is limited to the period for which funds are authorized to be encumbered under subdivision (a).

SEC. 5. Section 5050 of the Business and Professions Code is amended to read:

5050. (a) No person shall engage in the practice of public accountancy in this state unless such person is the holder of a valid permit to practice public accountancy issued by the board; provided, however, that nothing in this chapter shall prohibit a certified public accountant or a public accountant of another state, or any accountant of a foreign country lawfully practicing therein, from temporarily practicing in this state on professional business incident to his regular practice in another state or country.

(b) This section shall become inoperative on January 1, 2006, and as of that date is repealed.

SEC. 6. Section 5050 is added to the Business and Professions Code, to read:

5050. (a) No person shall engage in the practice of public accountancy in this state unless the person is the holder of a valid permit to practice public accountancy issued by the board or a holder of a practice privilege pursuant to Article 5.1 (commencing with Section 5096).

(b) This section shall become operative on January 1, 2006.

SEC. 7. Section 5063.3 is added to the Business and Professions Code, to read:

5063.3. (a) No confidential information obtained by a licensee, in his or her professional capacity, concerning a client or a prospective client shall be disclosed by the licensee without the written permission of the client or prospective client, except the following:

(1) Disclosures made by a licensee in compliance with a subpoena or a summons enforceable by order of a court.

(2) Disclosures made by a licensee regarding a client or prospective client to the extent the licensee reasonably believes it is necessary to maintain or defend himself or herself in a legal proceeding initiated by the client or prospective client.

(3) Disclosures made by a licensee in response to an official inquiry from a federal or state government regulatory agency.

(4) Disclosures made by a licensee or a licensee's duly authorized representative to another licensee in connection with a proposed sale or merger of the licensee's professional practice.

(5) Disclosures made by a licensee to either of the following:

(A) Another licensee to the extent necessary for purposes of professional consultation.

(B) Organizations that provide professional standards review and ethics or quality control peer review.

(6) Disclosures made when specifically required by law.

(7) Disclosures specified by the board in regulation.

(b) In the event that confidential client information may be disclosed to persons or entities outside the United States of America in connection with the services provided, the licensee shall inform the client in writing and obtain the client's written permission for the disclosure.

SEC. 8. Section 5076 of the Business and Professions Code is amended to read:

5076. (a) In order to renew its registration, a firm providing attest services, other than a sole proprietor or a small firm as defined in Section 5000, shall complete a peer review prior to the first registration expiration date after July 1, 2008, and no less frequently than every three years thereafter.

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

(1) ''Peer review'' means a study, appraisal, or review conducted in accordance with professional standards of the professional work of a licensee or registered firm by another licensee unaffiliated with the licensee or registered firm being reviewed. The peer review shall include, but not be limited to, a review of at least one attest engagement representing the highest level of service performed by the firm and may include an evaluation of other factors in accordance with requirements specified by the board in regulations.

(2) ''Attest services'' include an audit, a review of financial statements, or an examination of prospective financial information, provided, however, ''attest services'' shall not include the issuance of compiled financial statements.

(c) The board shall adopt regulations as necessary to implement, interpret, and make specific the peer review requirements in this section, including, but not limited to, regulations specifying the requirements for the approval of peer review providers, and regulations establishing a peer review oversight committee.

(d) The board shall review whether to implement the program specified in this section in light of the changes in federal and state law or regulations or professional standards, and shall report its findings to the Legislature and the department by September 1, 2005.

SEC. 9. Section 5088 of the Business and Professions Code is amended to read:

5088. (a) Any person who is the holder of a valid and unrevoked license as a certified public accountant issued under the laws of any state and who applies to the board for a license as a certified public accountant under the provisions of Section 5087 may, after application for licensure and after providing evidence of qualifying continuing education, perform the same public accounting services in this state as a certified public accountant licensed under Section 5092 or 5093 until the time his or her application for a license is granted or rejected.

(b) An applicant meeting the requirements of subdivision (a) who certifies that he or she has met the requirements of Section 5095 may perform attest services in this state until the time his or her application for a license is granted or rejected.

(c) This section shall remain operative until January 1, 2006, and as of that date is repealed.

SEC. 10. Section 5088 is added to the Business and Professions Code, to read:

5088. (a) Any individual who is the holder of a current and valid license as a certified public accountant issued under the laws of any state and who applies to the board for a license as a certified public accountant under the provisions of Section 5087 may, until the time the application for a license is granted or denied, practice public accountancy in this state only under a practice privilege pursuant to the provisions of Article 5.1 (commencing with Section 5096), except that, for purposes of this section, the individual is not disqualified from a practice privilege during the period the application is pending by virtue of maintaining an office or principal place of business, or both, in this state. The board may by regulation provide for exemption, credit, or proration of fees to avoid duplication of fees.

(b) This section shall become operative on January 1, 2006.

SEC. 11. Article 5.1 (commencing with Section 5096) is added to Chapter 1 of Division 3 of the Business and Professions Code, to read:

Article 5.1. Practice Privileges

5096. (a) An individual whose principal place of business is not in this state and who has a valid and current license, certificate or permit to practice public accountancy from another state may, subject to the conditions and limitations in this article, engage in the practice of public accountancy in this state under a practice privilege without obtaining a certificate or license under this chapter if the individual satisfies one of the following:

(1) The individual has continually practiced public accountancy as a certified public accountant under a valid license issued by any state for at least four of the last ten years.

(2) The individual has a license, certificate, or permit from a state which has been determined by the board to have education, examination, and experience qualifications for licensure substantially equivalent to this state's qualifications under Section 5093.

(3) The individual possesses education, examination, and experience qualifications for licensure which have been determined by the board to be substantially equivalent to this state's qualifications under Section 5093.

(b) The board may designate states as substantially equivalent under paragraph (2) of subdivision (a) and may accept individual qualification evaluations or appraisals conducted by designated entities, as satisfying the requirements of paragraph (3) of subdivision (a).

(c) To obtain a practice privilege under this section, an individual who meets the requirements of subdivision (a), shall do the following:

(1) In the manner prescribed by board regulation, notify the board of the individual's intent to practice.

(2) Pay a fee as provided in Article 8 (commencing with Section 5130).

(d) Except as otherwise provided by this article or by board regulation, the practice privilege commences when the individual notifies the board, provided the fee is received by the board within 30 days of that date. The board shall permit the notification to be provided electronically.

(e) An individual who holds a practice privilege under this article:

(1) Is subject to the personal and subject matter jurisdiction and disciplinary authority of the board and the courts of this state.

(2) Shall comply with the provisions of this chapter, board regulations, and other laws, regulations, and professional standards applicable to the practice of public accountancy by the licensees of this state and to any other laws and regulations applicable to individuals practicing under practice privileges in this state except the individual is deemed, solely for the purpose of this article, to have met the continuing education requirements and ethics examination requirements of this state when such individual has met the examination and continuing education requirements of the state in which the individual holds the valid license, certificate, or permit on which the substantial equivalency is based.

(3) Shall not provide public accountancy services in this state from any office located in this state, except as an employee of a firm registered in this state. This paragraph does not apply to public accountancy services provided to a client at the client's place of business or residence.

(4) Is deemed to have appointed the regulatory agency of the state that issued the individual's certificate, license, or permit upon which substantial equivalency is based as the individual's agent on whom notices, subpoenas or other process may be served in any action or proceeding by the board against the individual.

(5) Shall cooperate with any board investigation or inquiry and shall timely respond to a board investigation, inquiry, request, notice, demand or subpoena for information or documents and timely provide to the board the identified information and documents.

(f) A practice privilege expires one year from the date of the notice, unless a shorter period is set by board regulation.

(g) (1) No individual may practice under a practice privilege without prior approval of the board if the individual has, or acquires at any time during the term of the practice privilege, any disqualifying condition under paragraph (2) of this subdivision.

(2) Disqualifying conditions include:

(A) Conviction of any crime other than a minor traffic violation.

(B) Revocation, suspension, denial, surrender or other discipline or sanctions involving any license, permit, registration, certificate or other authority to practice any profession in this or any other state or foreign country or to practice before any state, federal, or local court or agency, or the Public Company Accounting Oversight Board.

(C) Pendency of any investigation, inquiry or proceeding by or before any state, federal or local court or agency, including, but not limited to, the Public Company Accounting Oversight Board, involving the professional conduct of the individual.

(D) Any judgment or arbitration award against the individual involving the professional conduct of the individual in the amount of thirty thousand dollars ($30,000) or greater.

(E) Any other conditions as specified by the board in regulation.

(3) The board may adopt regulations exempting specified minor occurrences of the conditions listed in subparagraph (B) of paragraph (2) from being disqualifying conditions under this subdivision.

5096.1. (a) Any individual, not a licensee of this state, who is engaged in any act which is the practice of public accountancy in this state, and who has not given notice of intent to practice under practice privileges and paid the fee required pursuant to the provisions of this article, and who has a license, certificate or other authority to engage in the practice of public accountancy in any other state, regardless of whether active, inactive, suspended, or subject to renewal on payment of a fee or completion of an educational or ethics requirement, is:

(1) Deemed to be practicing public accountancy unlawfully in this state.

(2) Subject to the personal and subject matter jurisdiction and disciplinary authority of the board and the courts of this state to the same extent as a holder of a valid practice privilege.

(3) Deemed to have appointed the regulatory agency of the state that issued the individual's certificate or license as the individual's agent on whom notice, subpoenas, or other process may be served in any action or proceeding by the board against the individual.

(b) The board may prospectively deny a practice privilege to any individual who has violated this section or implementing regulations or committed any act which would be grounds for discipline against the holder of a practice privilege.

5096.2. (a) Practice privileges may be denied for failure to qualify under or comply with the provisions of this article or implementing regulations, or for any act that if committed by an applicant for licensure would be grounds for denial of a license under Section 480 or if committed by a licensee would be grounds for discipline under Section 5100, or for any act committed outside of this state that would be a violation if committed within this state.

(b) The board may deny practice privileges using either of the following procedures:

(1) Notifying the individual in writing of all of the following:

(A) That the practice privilege is denied.

(B) The reasons for denial.

(C) The earliest date on which the individual is eligible for a practice privilege.

(D) That the individual has a right to appeal the notice and request a hearing under the provisions of the Administrative Procedure Act if a written notice of appeal and request for hearing is made within 60 days.

(E) That, if the individual does not submit a notice of appeal and request for hearing within 60 days, the board's action set forth in the notice shall become final.

(2) Filing a statement of issues under the Administrative Procedure Act.

(c) An individual who had been denied a practice privilege may apply for a new practice privilege not less than one year after the effective date of the notice or decision denying the practice privilege unless a longer time period, not to exceed three years, is specified in the notice or decision denying the practice privilege.

5096.3. (a) Practice privileges are subject to revocation, suspension, fines or other disciplinary sanctions for any conduct that would be grounds for discipline against a licensee of the board or for any conduct in violation of this article or regulations implementing this article.

(b) Practice privileges are subject to discipline during any time period in which they are valid, under administrative suspension, or expired.

(c) The board may recover its costs pursuant to Section 5107 as part of any disciplinary proceeding against the holder of a practice privilege.

(d) An individual whose practice privilege has been revoked may apply for a new practice privilege not less than one year after the effective date of the board's decision revoking the individual's practice privilege unless a longer time period, not to exceed three years, is specified in the board's decision revoking the practice privilege.

(e) The provisions of the Administrative Procedure Act, including, but not limited to, the commencement of a disciplinary proceeding by the filing of an accusation by the board shall apply under this article.

5096.4. (a) The right of an individual to practice in this state under a practice privilege may be administratively suspended at any time by an order issued by the board or its executive officer, without prior notice or hearing, for the purpose of conducting a disciplinary investigation, proceeding, or inquiry concerning the representations made in the notice, the individual's competence or qualifications to practice under practice privileges, failure to timely respond to a board inquiry or request for information or documents, or under other conditions and circumstances provided for by board regulation.

(b) The administrative suspension order is immediately effective when mailed to the individual's address of record or agent for notice and service as provided for in this article.

(c) The administrative suspension order shall contain the following:

(1) The reason for the suspension.

(2) A statement that the individual has the right, within 30 days, to appeal the administrative suspension order and request a hearing.

(3) A statement that any appeal hearing will be conducted under the provisions of the Administrative Procedure Act applicable to individuals who are denied licensure, including the filing of a statement of issues by the board setting forth the reasons for the administrative suspension of practice privileges and specifying the statutes and rules with which the individual must show compliance by producing proof at the hearing and in addition any particular matters that have come to the attention of the board and that would authorize the administrative suspension, or the denial of practice privileges.

(d) The burden is on the holder of the suspended practice privilege to establish both qualification and fitness to practice under practice privileges.

(e) The administrative suspension shall continue in effect until terminated by an order of the board or the executive officer or expiration of the practice privilege under administrative suspension.

(f) Administrative suspension is not discipline and shall not preclude any individual from applying for a license to practice public accountancy in this state or from applying for a new practice privilege upon expiration of the one under administrative suspension, except that the new practice privilege shall not be effective until approved by the board.

(g) Notwithstanding any administrative suspension, a practice privilege expires one year from the date of notice unless a shorter period is set by board regulation.

(h) Proceedings to appeal an administrative suspension order may be combined or coordinated with proceedings for denial or discipline of a practice privilege.

5096.5. Notwithstanding any other provision of this article, an individual may not sign any attest report pursuant to a practice privilege unless the individual meets the experience requirements of Section 5095 and completes any continuing education or other conditions required by the board regulations implementing this article.

5096.6. In addition to the authority otherwise provided for by this code, the board may delegate to the executive officer the authority to issue any notice or order provided for in this article and to act on behalf of the board, including, but not limited to, issuing a notice of denial of a practice privilege and an interim suspension order, subject to the right of the individual to timely appeal and request a hearing as provided for in this article.

5096.7. Except as otherwise provided in this article, the following definitions apply:

(a) Anywhere the term ''license,'' ''licensee,'' ''permit,'' or ''certificate'' is used in this chapter or Division 1.5 (commencing with Section 475), it shall include persons holding practice privileges under this article, unless otherwise inconsistent with the provisions of the article.

(b) Any notice of practice privileges under this article and supporting documents is deemed an application for licensure for purposes of the provisions of this code, including, but not limited to, the provisions of this chapter and the provisions of Division 1.5 (commencing with Section 475) related to the denial, suspension and revocation of licenses.

(c) Anywhere the term ''employee'' is used in this article it shall include, but is not limited to, partners, shareholders, and other owners.

5096.8. In addition to the authority otherwise provided by this code, all investigative powers of the board, including those delegated to the executive officer, shall apply to investigations concerning compliance with, or actual or potential violations of, the provisions of this article or implementing regulations, including, but not limited to, the power to conduct investigations and hearings by the executive officer under Section 5103 and to issuance of subpoenas under Section 5108.

5096.9. The board is authorized to adopt regulations to implement, interpret, or make specific the provisions of this article.

5096.10. The provisions of this article shall only be operative if commencing July 1, 2005, and continuing during the period provided in Section 5096.11, there is an appropriation from the Accountancy Fund in the annual Budget Act to fund the activities in the article and sufficient hiring authority is granted pursuant to a budget change proposal to the board to provide staffing to implement this article.

5096.11. This article shall become operative on January 1, 2006. It shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2011, deletes or extends that date.

SEC. 12. Section 5100 of the Business and Professions Code is amended to read:

5100. After notice and hearing the board may revoke, suspend, or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

(a) Conviction of any crime substantially related to the qualifications, functions and duties of a certified public accountant or a public accountant.

(b) A violation of Section 478, 498, or 499 dealing with false statements or omissions in the application for a license, in obtaining a certificate as a certified public accountant, in obtaining registration under this chapter, or in obtaining a permit to practice public accountancy under this chapter.

(c) Dishonesty, fraud, gross negligence, or repeated negligent acts committed in the same or different engagements, for the same or different clients, or any combination of engagements or clients, each resulting in a violation of applicable professional standards that indicate a lack of competency in the practice of public accountancy or in the performance of the bookkeeping operations described in Section 5052.

(d) Cancellation, revocation, or suspension of a certificate or other authority to practice as a certified public accountant or a public accountant, refusal to renew the certificate or other authority to practice as a certified public accountant or a public accountant, or any other discipline by any other state or foreign country.

(e) Violation of Section 5097.

(f) Violation of Section 5120.

(g) Willful violation of this chapter or any rule or regulation promulgated by the board under the authority granted under this chapter.

(h) Suspension or revocation of the right to practice before any governmental body or agency.

(i) Fiscal dishonesty or breach of fiduciary responsibility of any kind.

(j) Knowing preparation, publication, or dissemination of false, fraudulent, or materially misleading financial statements, reports, or information.

(k) Embezzlement, theft, misappropriation of funds or property, or obtaining money, property, or other valuable consideration by fraudulent means or false pretenses.

(*l*) The imposition of any discipline, penalty, or sanction on a registered public accounting firm or any associated person of such firm, or both, or on any other holder of a permit, certificate, license, or other authority to practice in this state, by the Public Company Accounting Oversight Board or the United States Securities and Exchange Commission, or their designees under the Sarbanes-Oxley Act of 2002 or other federal legislation.

(m) Unlawfully engaging in the practice of public accountancy in another state.

SEC. 13. Section 5109 of the Business and Professions Code is amended to read:

5109. The expiration, cancellation, forfeiture, or suspension of a license, practice, privilege, or other authority to practice public accountancy by operation of law or by order or decision of the board or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of or action or disciplinary proceeding against the licensee, or to render a decision suspending or revoking the license.

SEC. 14. Article 6.5 (commencing with Section 5116) is added to Chapter 1 of Division 3 of the Business and Professions Code, to read:

Article 6.5. Administrative Penalties

5116. (a) The board, after appropriate notice and an opportunity for hearing, may order any licensee or applicant for licensure or examination to pay an administrative penalty as provided in this article as part of any disciplinary proceeding or other proceeding provided for in this chapter.

(b) The board may assess administrative penalties under one or more provisions of this article. However, the total administrative penalty to be paid by the licensee shall not exceed the amount of the highest administrative penalty authorized by this article.

(c) The board shall adopt regulations to establish criteria for assessing administrative penalties based upon factors, including, but not limited to, actual and potential consumer harm, nature and severity of the violation, the role of the person in the violation, the person's ability to

pay the administrative penalty, and the level of administrative penalty necessary to deter future violations of this chapter.

(d) Administrative penalties assessed under this article shall be in addition to any other penalties or sanctions imposed on the licensee or other person, including, but not limited to, license revocation, license suspension, denial of the application for licensure, denial of the petition for reinstatement, or denial of admission to the licensing examination. Payment of these administrative penalties may be included as a condition of probation when probation is ordered.

(e) All administrative penalties collected under this article shall be deposited in the Accountancy Fund.

5116.1. In accordance with Section 5116 and applicable regulations, except as provided in Section 5116.2, any licensee who violates any provision of this chapter may be assessed an administrative penalty of not more than five thousand dollars ($5,000) for the first violation and not more than ten thousand dollars ($10,000) for each subsequent violation.

5116.2. In accordance with Section 5116 and applicable regulations, any licensee who violates subdivision (a), (c), (i), (j) or (k) of Section 5100 may be assessed an administrative penalty of not more than one million dollars ($1,000,000) for the first violation and not more than five million dollars ($5,000,000) for any subsequent violation, except that a licensee who is a natural person may be assessed an administrative penalty of not more than fifty thousand dollars ($50,000) for the first violation and not more than one hundred thousand dollars ($100,000) for any subsequent violation.

5116.3. In accordance with Section 5116 and applicable regulations, any person who is found to have cheated or subverted or attempted to subvert or cheat on any licensing examination or who conspired with or aided or abetted any other person to cheat, subvert or attempt to subvert any examination may be assessed an administrative penalty of not more than five thousand dollars ($5,000) for the first violation and not more than ten thousand dollars ($10,000) for each subsequent violation.

5116.4. (a) The board's executive officer may request assessment of an administrative penalty in any disciplinary or other proceeding provided in this chapter or in any notice to an applicant pursuant to Section 5112.

(b) The administrative penalty pursuant to subdivision (a) shall become final unless contested within the time period provided for the filing of a notice of appeal, for the filing of a notice of defense, or for requesting a hearing in the proceeding.

(c) Nothing in this article shall prevent an administrative penalty from being included in a final contested or default decision of the board

or in a notice issued pursuant to Section 5112 once the time period for requesting a hearing has expired.

5116.5. The board may obtain a judgment in any court of competent jurisdiction ordering the payment of any final administrative penalty assessed by the board pursuant to this article upon the filing of a certified copy of the board's final decision or notice issued pursuant to Section 5112.

5116.6. Anywhere the term ''licensee'' is used in the article it shall include certified public accountants, public accountants, partnerships, corporations, holders of practice privileges, other persons licensed, registered, or otherwise authorized to practice public accountancy under this chapter, and persons who are in violation of any provision of Article 5.1 (commencing with Section 5096).

SEC. 15. Section 5134 of the Business and Professions Code is amended to read:

5134. The amount of fees prescribed by this chapter is as follows:

(a) The fee to be charged to each applicant for the certified public accountant examination shall be fixed by the board at an amount to equal the actual cost to the board of the purchase or development of the examination, plus the estimated cost to the board of administering the examination and shall not exceed six hundred dollars ($600). The board may charge a reexamination fee equal to the actual cost to the board of the purchase or development of the examination or any of its component parts, plus the estimated cost to the board of administering the examination and not to exceed seventy-five dollars ($75) for each part that is subject to reexamination.

(b) The fee to be charged to out-of-state candidates for the certified public accountant examination shall be fixed by the board at an amount equal to the estimated cost to the board of administering the examination and shall not exceed six hundred dollars ($600) per candidate.

(c) The application fee to be charged to each applicant for issuance of a certified public accountant certificate shall be fixed by the board at an amount equal to the estimated administrative cost to the board of processing and issuing the certificate and shall not exceed two hundred fifty dollars ($250).

(d) The application fee to be charged to each applicant for issuance of a certified public accountant certificate by waiver of examination shall be fixed by the board at an amount equal to the estimated administrative cost to the board of processing and issuing the certificate and shall not exceed two hundred fifty dollars ($250).

(e) The fee to be charged to each applicant for registration as a partnership or professional corporation shall be fixed by the board at an amount equal to the estimated administrative cost to the board of

processing and issuing the registration and shall not exceed two hundred fifty dollars ($250).

(f) The board shall fix the biennial renewal fee so that, together with the estimated amount from revenue other than that generated by subdivisions (a) to (e), inclusive, the reserve balance in the board's contingent fund shall be equal to approximately nine months of annual authorized expenditures. Any increase in the renewal fee made after July 1, 1990, shall be effective upon a determination by the board, by regulation adopted pursuant to subdivision (k), that additional moneys are required to fund authorized expenditures other than those specified in subdivisions (a) to (e), inclusive, and maintain the board's contingent fund reserve balance equal to nine months of estimated annual authorized expenditures in the fiscal year in which the expenditures will occur. The biennial fee for the renewal of each of the permits to engage in the practice of public accountancy specified in Section 5070 shall not exceed two hundred fifty dollars ($250).

(g) The delinquency fee shall be 50 percent of the accrued renewal fee.

(h) The initial permit fee is an amount equal to the renewal fee in effect on the last regular renewal date before the date on which the permit is issued, except that, if the permit is issued one year or less before it will expire, then the initial permit fee is an amount equal to 50 percent of the renewal fee in effect on the last regular renewal date before the date on which the permit is issued. The board may, by regulation, provide for the waiver or refund of the initial permit fee where the permit is issued less than 45 days before the date on which it will expire.

(i) On and after January 1, 2006, the annual fee to be charged an individual for a practice privilege pursuant to Section 5096 shall be fixed by the board at an amount not to exceed 50 percent of the biennial renewal fee provided in subdivision (f).

(j) The fee to be charged for the certification of documents evidencing passage of the certified public accountant examination, the certification of documents evidencing the grades received on the certified public accountant examination, or the certification of documents evidencing licensure shall be twenty-five dollars ($25).

(k) The actual and estimated costs referred to in this section shall be calculated every two years using a survey of all costs attributable to the applicable subdivision.

(*l*) Upon the effective date of this section the board shall fix the fees in accordance with the limits of this section and, on and after July 1, 1990, any increase in any fee fixed by the board shall be pursuant to regulation duly adopted by the board in accordance with the limits of this section.

(m) Fees collected pursuant to subdivisions (a) to (e), inclusive, shall be fixed by the board in amounts necessary to recover the actual costs of providing the service for which the fee is assessed, as projected for the fiscal year commencing on the date the fees become effective.

SEC. 16. Section 22252.1 is added to the Business and Professions Code, to read:

22252.1. (a) No confidential information obtained by a tax preparer, in his or her professional capacity, concerning a client or a prospective client shall be disclosed by the tax preparer without the written permission of the client or prospective client, except for the following:

(1) Disclosures made by a tax preparer in compliance with a subpoena or a summons enforceable by order of a court.

(2) Disclosures made by a tax preparer regarding a client or prospective client to the extent the tax preparer reasonably believes it is necessary to maintain or defend himself or herself in a legal proceeding initiated by the client or prospective client.

(3) Disclosures made by a tax preparer in response to an official inquiry from a federal or state government regulatory agency.

(4) Disclosures made by a tax preparer or to a tax preparer's duly authorized representative to another tax preparer in connection with a proposed sale or merger of the tax preparer's professional practice.

(5) Disclosures made by a tax preparer to either of the following:

(A) Another tax preparer to the extent necessary for purposes of professional consultation.

(B) Organizations that provide professional standards review and ethics or quality control peer review.

(6) Disclosures made when specifically required by law.

(b) In the event that confidential client information may be disclosed to persons or entities outside the United States of America in connection with the services provided, the tax preparer shall inform the client in writing and obtain the client's written permission for the disclosure.

(c) It is the intent of the Legislature that this section complement and does not replace Section 17530.5 as applied to tax preparers by subdivision (f) of Section 1799.1a of the Civil Code.

SEC. 17. Section 22253.2 of the Business and Professions Code is amended to read:

22253.2. (a) The Franchise Tax Board shall notify the California Tax Education Council when it identifies an individual who has violated paragraph (1) of subdivision (a) of Section 22253.

(b) The Franchise Tax Board pursuant to an agreement with the California Tax Education Council, as authorized in subdivision (c), may do any of the following:

(1) Cite individuals preparing tax returns in violation of subdivision (a) of Section 22253.

(2) Levy a fine up to five thousand dollars ($5,000) per violation.

(3) Issue a cease and desist order, which shall remain in effect until the individual has come into compliance with the provisions of paragraph (1) of subdivision (a) of Section 22253.

(c) The California Tax Education Council may enter into an agreement with the Franchise Tax Board to provide reimbursement to the Franchise Tax Board for any expenses incurred by the Franchise Tax Board to implement subdivision (a) of this section.

(d) The Franchise Tax Board shall not incur any costs associated with any of the activities authorized by subdivision (b) until either one of the following has occurred:

(1) Commencing January 1, 2006, and continuing each year thereafter, there is an appropriation in the Franchise Tax Board's annual budget to fund the activities authorized by subdivision (b).

(2) (A) An agreement has been executed between the California Tax Education Council and the Franchise Tax Board that provides that an amount equal to all first year costs necessary to implement and administer the activities authorized by subdivision (b) shall be received by the Franchise Tax Board. For purposes of this paragraph, first year costs include costs associated with, but not limited to, the development of processes or systems changes if necessary, and labor.

(B) An agreement has been executed between the California Tax Education Council and the Franchise Tax Board that provides that the annual costs incurred by the Franchise Tax Board as a result of the activities authorized by subdivision (b) shall be reimbursed by the California Tax Education Council to the Franchise Tax Board.

(C) Pursuant to the agreement described in subparagraph (A), the Franchise Tax Board has received an amount equal to the first year costs.

SEC. 18. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 922

An act to add Section 6254.18 to the Government Code, relating to public records.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 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) No health care worker should be subject to the risk of threats, assaults, or physical harm in order to provide any legal medical procedure.

(b) A 2000 survey of providers of reproductive services conducted by the Senate Office of Research found that, from 1995 through 2000, half of health care workers providing reproductive services experienced a crime consisting of threats of violence and vandalism.

(c) Threats of violence, stalking, and vandalism have extended beyond reproductive service providers to also target their family members and supporters.

(d) The personal information used to target the victims of these crimes often is obtained by making a request for public records from a government agency.

(e) The high incidence of violence against reproductive service providers is one of the primary reasons why access to reproductive health services has become increasingly difficult.

SEC. 2. Section 6254.18 is added to the Government Code, to read:

6254.18. (a) Nothing in this chapter shall be construed to require disclosure of any personal information received, collected, or compiled by a public agency regarding the employees, volunteers, board members, owners, partners, officers, or contractors of a reproductive health services facility who have notified the public agency pursuant to subdivision (d) if the personal information is contained in a document that relates to the facility.

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

(1) ''Contractor'' means an individual or entity that contracts with a reproductive health services facility for services related to patient care.

(2) ''Personal information'' means the following information related to an individual that is maintained by a public agency: social security number, physical description, home address, home telephone number, statements of personal worth or personal financial data filed pursuant to subdivision (n) of Section 6254, personal medical history, employment

history, electronic mail address, and information that reveals any electronic network location or identity.

(3) ''Public agency'' means all of the following:

(A) The State Department of Health Services.

(B) The Department of Consumer Affairs.

(C) The Department of Managed Health Care.

(4) ''Reproductive health services facility'' means the office of a licensed physician and surgeon whose specialty is family practice, obstetrics, or gynecology, or a licensed clinic, where at least 50 percent of the patients of the physician or the clinic are provided with family planning or abortion services.

(c) Any person may institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to obtain access to employment history information pursuant to Sections 6258 and 6259. If the court finds, based on the facts of a particular case, that the public interest served by disclosure of employment history information clearly outweighs the public interest served by not disclosing the information, the court shall order the officer or person charged with withholding the information to disclose employment history information or show cause why he or she should not do so pursuant to Section 6259.

(d) In order for this section to apply to an individual who is an employee, volunteer, board member, officer, or contractor of a reproductive health services facility, the individual shall notify the public agency to which his or her personal information is being submitted or has been submitted that he or she falls within the application of this section. The reproductive health services facility shall retain a copy of all notifications submitted pursuant to this section. This notification shall be valid if it complies with all of the following:

(1) Is on the official letterhead of the facility.

(2) Is clearly separate from any other language present on the same page and is executed by a signature that serves no other purpose than to execute the notification.

(3) Is signed and dated by both of the following:

(A) The individual whose information is being submitted.

(B) The executive officer or his or her designee of the reproductive health services facility.

(e) The privacy protections for personal information authorized pursuant to this section shall be effective from the time of notification pursuant to subdivision (d) until either one of the following occurs:

(1) Six months after the date of separation from a reproductive health services facility for an individual who has served for not more than one year as an employee, contractor, volunteer, board member, or officer of the reproductive health services facility.

(2) One year after the date of separation from a reproductive health services facility for an individual who has served for more than one year as an employee, contractor, volunteer, board member, or officer of the reproductive health services facility.

(f) Within 90 days of separation of an employee, contractor, volunteer, board member, or officer of the reproductive health services facility who has provided notice to a public agency pursuant to subdivision (c), the facility shall provide notice of the separation to the relevant agency or agencies.

(g) Nothing in this section shall prevent the disclosure by a government agency of data regarding age, race, ethnicity, national origin, or gender of individuals whose personal information is protected pursuant to this section, so long as the data contains no individually identifiable information.

CHAPTER 923

An act to amend Sections 3361, 3362, 3691, 3691.2, and 4217 of, and to add Section 3692.4 to, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 2004.]

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

SECTION 1. Section 3361 of the Revenue and Taxation Code is amended to read:

3361. Annually, on or before June 8th, the tax collector shall publish a notice of power and intent to sell all property which will be tax defaulted for either of the following:

(a) Five years or more on the date specified.

(b) Three or more years on the date specified in the case of residential real property that could serve the public benefit by providing housing or services directly related to low-income persons, for which a request has been made by a city, county, city and county, or nonprofit organization, pursuant to Section 3692.4, to offer that property at the next scheduled public auction.

SEC. 1.5. Section 3361 of the Revenue and Taxation Code is amended to read:

3361. Annually, on or before June 8th, the tax collector shall publish a notice of power and intent to sell all property that will be tax defaulted for one of the following:

(a) Five years or more on the date specified.

(b) Three or more years on the date specified in the case of residential real property that could serve the public benefit by providing housing or services directly related to low-income persons, for which a request has been made by a city, county, city and county, or nonprofit organization, pursuant to Section 3692.4, to offer that property at the next scheduled public auction.

(c) Three years or more in the case of nonresidential commercial property, as defined in Section 3691, in an applicable county, on the date specified.

SEC. 2. Section 3362 of the Revenue and Taxation Code is amended to read:

3362. The published notice shall show:

(a) The date of the notice.

(b) That on July 1, five years or more will have elapsed since the property became tax defaulted, or in the case of residential real property that could serve the public benefit by providing housing or services directly related to low-income persons, three years or more have elapsed, and a request has been made by a city, county, city and county, or nonprofit organization, pursuant to Section 3692.4, to offer that property at the next scheduled public auction.

(c) That, unless sooner redeemed or an installment plan of redemption is initiated, the property will be sold.

(d) That the power to sell for nonpayment of taxes arises if the property remains tax defaulted at 12:01 a.m. on July 1.

(e) That if the property is sold for nonpayment of taxes the right of redemption will terminate.

(f) The official who will furnish all information concerning redemption.

(g) The fiscal year for which the defaulted taxes were levied.

(h) A description of the property. The assessments contained in this notice shall be numbered in ascending numerical order.

(i) The amount of taxes originally declared in default opposite the description of the property.

(j) The name of the assessee on the current roll.

(k) The street address of the property, if any, shown on the county assessment records.

SEC. 2.5. Section 3362 of the Revenue and Taxation Code is amended to read:

3362. The published notice shall show:

(a) The date of the notice.

(b) (1) That on July 1, five years or more will have elapsed since the property became tax defaulted; or

(2) That, on July 1, three years or more in the case of nonresidential commercial property, as defined in Section 3691, in an applicable county will have elapsed since the property became tax defaulted; or

(3) That, on July 1, in the case of residential real property that could serve the public benefit by providing housing or services directly related to low-income persons, three years or more have elapsed, and a request has been made by a city, county, city and county, or nonprofit organization, pursuant to Section 3692.4, to offer that property at the next scheduled public auction.

(c) That, unless sooner redeemed or an installment plan of redemption is initiated, the property will be sold.

(d) That the power to sell for nonpayment of taxes arises if the property remains tax defaulted at 12:01 a.m. on July 1.

(e) That if the property is sold for nonpayment of taxes the right of redemption will terminate.

(f) The official who will furnish all information concerning redemption.

(g) The fiscal year for which the defaulted taxes were levied.

(h) A description of the property. The assessments contained in this notice shall be numbered in ascending numerical order.

(i) The amount of taxes originally declared in default opposite the description of the property.

(j) The name of the assessee on the current roll.

(k) The street address of the property, if any, shown on the county assessment records.

SEC. 3. Section 3691 of the Revenue and Taxation Code is amended to read:

3691. (a) (1) Five years or more after the property has become tax defaulted, the tax collector shall have the power to sell and shall attempt to sell in accordance with Section 3692 all or any portion of tax-defaulted property that has not been redeemed, without regard to the boundaries of the parcels, as provided in this chapter, unless by other provisions of law the property is not subject to sale. Any person, regardless of any prior or existing lien on, claim to, or interest in, the property, may purchase at the sale. In the case of tax-defaulted property that has been damaged by a disaster in an area declared to be a disaster area by local, state, or federal officials and whose damage has not been substantially repaired, the five-year period set forth in this subdivision shall be tolled until five years have elapsed from the date the damage to the property was incurred.

(2) When a part of a tax-defaulted parcel is sold, the balance continues subject to redemption and shall be separately valued for the purpose of redemption in the manner provided by Chapter 2 (commencing with Section 4131) of Part 7.

(b) (1) (A) Three years or more after the property has become tax defaulted and subject to a nuisance abatement lien or a request has been made by a city, county, city and county, or nonprofit organization, pursuant to Section 3692.4, to offer that property at the next scheduled public auction, the tax collector shall have the power to sell and may sell all or any portion of tax-defaulted property that has not been redeemed, without regard to the boundaries of parcels, as provided in this chapter, unless by other provisions of law the property is not subject to sale. Any person, regardless of any prior or existing lien on, claim to, or interest in, the property, may purchase at the sale.

(B) When a part of a tax-defaulted parcel is sold, the balance continues subject to redemption and shall be separately valued for the purpose of redemption in the manner provided by Chapter 2 (commencing with Section 4131) of Part 7.

(2) Before the tax collector sells vacant residential developed property pursuant to this subdivision, actual notice, by certified mail, shall be provided to the property owner, if the property owner's identity can be determined from the county assessor's or county recorder's records. The tax collector's power of sale shall not be affected by the failure of the property owner to receive notice.

(3) Before the tax collector sells vacant residential developed property pursuant to this subdivision, notice of the sale shall be given in the manner specified by Section 3704.7.

SEC. 3.5. Section 3691 of the Revenue and Taxation Code is amended to read:

3691. (a) (1) (A) Five years or more, or three years or more in the case of nonresidential commercial property, after the property has become tax defaulted, the tax collector shall have the power to sell and shall attempt to sell in accordance with Section 3692 all or any portion of tax-defaulted property that has not been redeemed, without regard to the boundaries of the parcels, as provided in this chapter, unless by other provisions of law the property is not subject to sale. Any person, regardless of any prior or existing lien on, claim to, or interest in, the property, may purchase at the sale. In the case of tax-defaulted property that has been damaged by a disaster in an area declared to be a disaster area by local, state, or federal officials and whose damage has not been substantially repaired, the five-year period set forth in this subdivision shall be tolled until five years have elapsed from the date the damage to the property was incurred.

(B) A county may elect, by an ordinance or resolution adopted by a majority vote of its entire governing body, to have the five-year time period described in subparagraph (A) apply to tax-defaulted nonresidential commercial property.

(C) For purposes of this subdivision, ''nonresidential commercial property'' means all property except the following:

(i) A constructed single-family or multifamily unit that is intended to be used primarily as a permanent residence, is used primarily as a permanent residence, or that is zoned as a residence, and the land on which that unit is constructed.

(ii) Real property that is used and zoned for producing commercial agricultural commodities.

(2) When a part of a tax-defaulted parcel is sold, the balance continues subject to redemption and shall be separately valued for the purpose of redemption in the manner provided by Chapter 2 (commencing with Section 4131) of Part 7.

(3) The tax collector shall provide notice of an intended sale under this subdivision in the manner prescribed by Sections 3704 and 3704.5 and any other applicable statute. If the intended sale is of nonresidential commercial property that has been tax-defaulted for fewer than 5 years, all of the following apply:

(A) On or before the notice date, the tax collector shall also mail, in the manner specified in paragraph (1) of subdivision (c) of Section 2924b of the Civil Code, notice containing any information contained in the publication required under Sections 3704 and 3704.5 to, as applicable, all of the following:

(i) The parties specified in paragraph (2) of subdivision (c) of Section 2924b of the Civil Code.

(ii) Each taxing agency specified in paragraph (3) of subdivision (c) of Section 2924b of the Civil Code.

(iii) Any beneficiary of a deed of trust or a mortgagee of any mortgage recorded against the nonresidential commercial property, and any assignee or vendee of these beneficiaries or mortgagees.

(B) For purposes of this paragraph:

(i) ''Notice date'' means a date at least 90 days before an intended sale or at least 90 days before the date upon which the property may be sold.

(ii) ''Recording date of the notice of default'' as used in subdivision (c) of Section 2924b of the Civil Code means a date that is 30 days before the notice date.

(iii) ''Deed of trust or mortgage being foreclosed'' as used in subdivision (c) of Section 2924b of the Civil Code means the defaulted tax lien.

(b) (1) (A) Three years or more after the property has become tax defaulted and subject to a nuisance abatement lien or a request has been made by a city, county, city and county, or nonprofit organization, pursuant to Section 3692.4, to offer that property at the next scheduled public auction, the tax collector shall have the power to sell and may sell all or any portion of tax-defaulted property that has not been redeemed,

without regard to the boundaries of parcels, as provided in this chapter, unless by other provisions of law the property is not subject to sale. Any person, regardless of any prior or existing lien on, claim to, or interest in, the property, may purchase at the sale.

(B) When a part of a tax-defaulted parcel is sold, the balance continues subject to redemption and shall be separately valued for the purpose of redemption in the manner provided by Chapter 2 (commencing with Section 4131) of Part 7.

(2) Before the tax collector sells vacant residential developed property pursuant to this subdivision, actual notice, by certified mail, shall be provided to the property owner, if the property owner's identity can be determined from the county assessor's or county recorder's records. The tax collector's power of sale shall not be affected by the failure of the property owner to receive notice.

(3) Before the tax collector sells vacant residential developed property pursuant to this subdivision, notice of the sale shall be given in the manner specified by Section 3704.7.

(c) The amendments made to this section by the act adding this subdivision apply to property that becomes tax defaulted on or after January 1, 2005.

SEC. 4. Section 3691.2 of the Revenue and Taxation Code is amended to read:

3691.2. The notice shall specify:

(a) That five years or more have elapsed since the taxes or assessments on the parcel were declared in default, or that, pursuant to Section 3692.4, three years or more have elapsed and a request has been made by a city, county, city and county, or nonprofit organization to offer that property at the next scheduled public auction.

(b) That the property was duly assessed for taxation and the tax legally levied.

(c) That the property is subject to sale for nonpayment of taxes.

(d) The amount of taxes originally declared to be in default, unless there has been a partial cancellation of taxes, a redemption from a portion thereof, or a correction under Sections 4831.5 and 4876.5, in any of which events, the amount shall be the balance remaining.

(e) A metes and bounds or lot-block-tract description of the property.

SEC. 4.5. Section 3691.2 of the Revenue and Taxation Code is amended to read:

3691.2. The notice shall specify:

(a) A statement that five years or more have elapsed since the taxes or assessments on the parcel were declared in default; that three years or more in the case of nonresidential commercial property, as defined in Section 3691, have elapsed since the taxes or assessments on the parcel were declared in default; or that, pursuant to Section 3692.4, three years

or more have elapsed and a request has been made by a city, county, city and county, or nonprofit organization to offer that property at the next scheduled public auction.

(b) That the property was duly assessed for taxation and the tax legally levied.

(c) That the property is subject to sale for nonpayment of taxes.

(d) The amount of taxes originally declared to be in default, unless there has been a partial cancellation of taxes, a redemption from a portion thereof, or a correction under Sections 4831.5 and 4876.5, in any of which events, the amount shall be the balance remaining.

(e) A metes and bounds or lot-block-tract description of the property.

SEC. 5. Section 3692.4 is added to the Revenue and Taxation Code, to read:

3692.4. (a) Notwithstanding any other provision of law, any county, city, city and county, or any nonprofit organization as defined in Section 3772.5, may request the tax collector to bring to the next scheduled public auction any residential real property that meets all of the following requirements:

(1) The property taxes have been delinquent for at least three years.

(2) The real property will serve the public benefit of providing housing directly related to low-income persons.

(3) The real property is not occupied by the owner as his or her principal place of residence.

(b) Every request submitted to the tax collector shall include the following:

(1) A formal resolution of the governing board of the county, city, city and county, or nonprofit organization, requesting the accelerated auction of the real property and stating the public benefit.

(2) A written plan for the development, rehabilitation, or proposed use of the real property and how low-income persons will be served.

(3) If the request is from a nonprofit organization, the request shall have a formal resolution of approval from the city council of the city in which the real property is located, or from the board of supervisors of the county if the real property is located in an unincorporated area.

(c) Upon receiving a request as provided by this section, the tax collector shall include the real property in the next scheduled public auction.

(d) If the real property is acquired by a nonprofit organization at auction, a deed restriction shall be placed on the real property, requiring the real property to be used for low-income housing for a period of 30 years.

(e) This section may not be construed to preclude the application, to the real property or the current owners of that property, of any other provision of law not in conflict with this section.

SEC. 6. Section 4217 of the Revenue and Taxation Code is amended to read:

4217. Any person may elect to pay delinquent taxes in installments under this article at any time prior to 5 p.m. on the last business day prior to the date when the tax collector obtains the power to sell the property, except that if payment of delinquent taxes in installments is started under this article and the amount required to be paid in any fiscal year is not paid as required by this article, payments on property which, but for the installment redemption plan, would have been subject to a power of sale pursuant to Section 3691 during the calendar year in which default on the redemption plan occurs may not again be started under this article. All other payments may be started on or after July 1 of the fiscal year commencing after the fiscal year in which default occurred.

Persons electing to pay delinquent taxes in installments may be subject to a fee for processing their request.

The fee for payment of delinquent taxes in installments to the tax collector may be established by ordinance by the board of supervisors. The fee shall be governed by the provisions of Chapter 12.5 (commencing with Section 54985) of Part 1 of Division 2 of Title 5 of the Government Code and may be collected on the tax bill.

SEC. 6.5. Section 4217 of the Revenue and Taxation Code is amended to read:

4217. (a) Any person may elect to pay delinquent taxes in installments under this article at any time prior to 5 p.m. on the last business day prior to the date when the tax collector obtains the power to sell the property, except that if payment of delinquent taxes in installments is started under this article and the amount required to be paid in any fiscal year is not paid as required by this article, payments on property that, but for the installment redemption plan, would have been subject to a power of sale pursuant to Section 3691 during the calendar year in which default on the redemption plan occurs may not again be started under this article. All other payments may be started on or after July 1 of the fiscal year commencing after the fiscal year in which default occurred.

(b) (1) A person electing to pay delinquent taxes in installments may be subject to a fee for processing the person's request.

(2) The fee for payment of delinquent taxes in installments to the tax collector may be established by ordinance by the board of supervisors. The fee shall be governed by the provisions of Chapter 12.5 (commencing with Section 54985) of Part 1 of Division 2 of Title 5 of the Government Code and may be collected on the tax bill.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act provides for offsetting savings to local agencies or school districts

that result in no net costs to the local agencies or school districts, within the meaning of Section 17556 of the Government Code.

SEC. 8. Section 1.5 of this bill incorporates the same substantive changes to Section 3361 of the Revenue and Taxation Code proposed by both this bill and AB 2144. 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 3361 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 2144, in which case Section 1 of this bill shall not become operative.

SEC. 9. Section 2.5 of this bill incorporates the same substantive changes to Section 3362 of the Revenue and Taxation Code proposed by both this bill and AB 2144. 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 3362 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 2144, in which case Section 2 of this bill shall not become operative.

SEC. 10. Section 3.5 of this bill incorporates amendments to Section 3691 of the Revenue and Taxation Code proposed by both this bill and AB 2144. 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 3691 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 2144, in which case Section 3 of this bill shall not become operative.

SEC. 11. Section 4.5 of this bill incorporates the same substantive changes to Section 3691.2 of the Revenue and Taxation Code proposed by both this bill and AB 2144. 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 3691.2 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 2144, in which case Section 4 of this bill shall not become operative.

SEC. 12. Section 6.5 of this bill incorporates the same substantive changes to Section 4217 of the Revenue and Taxation Code proposed by both this bill and AB 2144. 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 4217 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 2144, in which case Section 6 of this bill shall not become operative.

CHAPTER 924

An act to amend Sections 2912 and 5028 of the Penal Code, relating to corrections.

[Approved by Governor September 29, 2004. Filed with
Secretary of State September 30, 2004.]

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

SECTION 1. Section 2912 of the Penal Code is amended to read:

2912. (a) Under its Foreign Prisoner Transfer Program, the Board of Prison Terms shall devise a method of notifying each foreign born inmate in a prison or reception center operated by the Department of Corrections that he or she may be eligible to serve his or her term of imprisonment in his or her nation of citizenship as provided in federal treaties.

(b) (1) The Board of Prison Terms shall actively encourage each eligible foreign born inmate to apply for return to his or her nation of citizenship as provided in federal treaties and shall provide quarterly reports outlining its efforts under this section to the Chairperson of the Joint Legislative Budget Committee and the chairperson of each fiscal committee of the Legislature.

(2) The Board of Prison Terms shall adopt the model program developed by the State of Texas for encouraging participation in the federal repatriation program where appropriate.

SEC. 2. Section 5028 of the Penal Code is amended to read:

5028. (a) Upon the entry of any person who is currently or was previously a foreign national into a facility operated by the Department of Corrections, the Director of Corrections shall inform the person that he or she may apply to be transferred to serve the remainder of his or her prison term in his or her current or former nation of citizenship. The director shall inform the person that he or she may contact his or her consulate and shall ensure that if notification is requested by the inmate, that the inmate's nearest consulate or embassy is notified without delay of his or her incarceration.

(b) Upon the request of a foreign consulate representing a nation that requires mandatory notification under Article 36 of the Vienna Convention on Consular Relations Treaty listed in subdivision (d) of Section 834c, the Department of Corrections shall provide the foreign consulate with a list of the names and locations of all inmates in its custody that have self-identified that nation as his or her place of birth.

(c) The Department of Corrections shall implement and maintain procedures to process applications for the transfer of prisoners to their current or former nations of citizenship under subdivision (a) and shall forward all applications to the Governor or his or her designee for appropriate action.

CHAPTER 925

An act relating to state property.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 2004.]

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

SECTION 1. The Director of General Services, with the approval of the State Public Works Board, may sell, exchange, or lease for current market value or for any lesser consideration authorized by law and upon those terms and conditions and subject to those reservations and exceptions as the Director of General Services determines are in the best interests of the state, all or any part of the following real property:

Parcel 1. Approximately 24.71 acres with improvements thereon, known as the Northern California Youth Reception Center and Clinic, located at 3001 Ramona Road in Sacramento, Sacramento County, and operated by the Department of the Youth Authority.

Parcel 2. Approximately 75 acres with improvements thereon, known as the Fred C. Nelles Correctional Facility located at 11850 East Whittier Boulevard, Los Angeles County, and operated by the Department of the Youth Authority.

SEC. 2. (a) Notices of every public auction or bid opening shall be posted on the property to be sold under this act and shall be published in a newspaper of general circulation published in the county in which the real property to be sold is situated.

(b) Any sale, exchange, lease, or transfer of the parcels described in this act is exempt from Chapter 3 (commencing with Section 21100) to Chapter 6 (commencing with Section 21165), inclusive, of Division 13 of the Public Resources Code.

SEC. 3. (a) The Department of General Services shall be reimbursed for any cost or expense incurred in the disposition of any parcels.

(b) The net proceeds of any moneys received from the disposition of any parcels described in this act shall be deposited in the General Fund and be available for appropriation in accordance with Section 15863 of the Government Code.

SEC. 4. As to any property sold pursuant to this act consisting of 15 acres or less, the Director of General Services shall except and reserve to the state all mineral deposits, as defined in Section 6407 of the Public Resources Code, below a depth of 500 feet, without surface rights of entry. As to property sold pursuant to this act consisting of more than 15 acres, the Director of General Services shall except and reserve to the state all mineral deposits, as defined in Section 6407 of the Public

Resources Code, together with the right to prospect for, mine, and remove the deposits. The rights to prospect for, mine, and remove the deposits shall be limited to those areas of the property conveyed that the director, after consultation with the State Lands Commission, determines to be reasonably necessary for the removal of the deposits.

CHAPTER 926

An act to amend Section 13332.09 of the Government Code, relating to state contracts.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 2004.]

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

SECTION 1. Section 13332.09 of the Government Code is amended to read:

13332.09. (a) No purchase order or other form of documentation for acquisition or replacement of motor vehicles shall be issued against any appropriation until the Department of General Services has investigated and established the necessity therefor.

(b) A state agency may not acquire surplus mobile equipment from any source for program support until the Department of General Services has investigated and established the necessity therefor.

(c) Notwithstanding any other provision of law, all contracts for the acquisition of motor vehicles or general use mobile equipment for a state agency shall be made by or under the supervision of the Department of General Services. Pursuant to Section 10298 the Department of General Services may collect a fee to offset the cost of the services provided.

(d) All passenger-type motor vehicles purchased for state officers and employees, except constitutional officers, shall be American-made vehicles of the light class, as defined by the State Board of Control, unless excepted by the Director of General Services on the basis of unusual requirements, including, but not limited to, use by the California Highway Patrol, that would justify the need for a motor vehicle of a heavier class.

(e) No general use mobile equipment having an original purchase price of twenty-five thousand dollars ($25,000) or more shall be rented or leased from a nonstate source and payment therefor made from any appropriation for the use of the Department of Transportation, without the prior approval of the Department of General Services after a determination that comparable state-owned equipment is not available,

unless obtaining approval would endanger life or property, in which case the transaction and the justification for not having sought prior approval shall be reported immediately thereafter to the Department of General Services.

(f) As used in this section:

(1) ''General use mobile equipment'' means equipment that is listed in the Mobile Equipment Inventory of the State Equipment Council and which is capable of being used by more than one state agency, and shall not be deemed to refer to equipment having a practical use limited to the controlling state agency only. Section 575 of the Vehicle Code shall have no application to this section.

(2) ''State agency'' means a state agency, as defined pursuant to Section 11000, and each campus of the California State University. The University of California is requested and encouraged to have the Department of General Services perform the tasks identified in this section with respect to the acquisition or replacement of motor vehicles by the University of California.

CHAPTER 927

An act to add Chapter 8 (commencing with Section 119400) to Part 15 of Division 104 of the Health and Safety Code, relating to pharmaceutical marketing.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 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) The trade association known as the Pharmaceutical Research and Manufacturers of America (PhRMA) has developed voluntary guidelines for pharmaceutical companies that pertain to gifts and financial incentives provided to doctors.

(b) The Office of Inspector General (OIG) within the United States Department of Health and Human Services has developed recommendations for pharmaceutical companies that pertain to gifts, financial incentives, and other matters relating to the development, manufacturing, marketing, and sales of pharmaceutical products.

(c) The PhRMA guidelines state, ''We are also concerned that our interactions with healthcare professionals not be perceived as inappropriate by patients or the public at large.''

(d) The OIG guidelines state, ''A comprehensive compliance program provides a mechanism that addresses the public and private sectors' mutual goals of reducing fraud and abuse; enhancing health care provider operational functions; improving the quality of health care services; and reducing the cost of health care.''

(e) It is therefore the intent of the Legislature in enacting this act to achieve the goals expressed in both the PhRMA voluntary guidelines and the OIG voluntary guidelines and to ensure greater adherence by pharmaceutical companies to both sets of existing guidelines by requiring pharmaceutical companies to adopt policies that ensure compliance with those guidelines.

SEC. 2. Chapter 8 (commencing with Section 119400) is added to Part 15 of Division 104 of the Health and Safety Code, to read:

CHAPTER 8. DRUG MARKETING PRACTICES

119400. The following definitions shall apply for purposes of this chapter:

(a) ''Dangerous drug'' means any drug that is unsafe for self-use and includes either of the following:

(1) Any drug that bears the legend ''Caution: federal law prohibits dispensing without prescription,'' ''Rx only,'' or words of similar import.

(2) Any drug or device that, pursuant to federal or state law, may be dispensed only by prescription, or that is furnished pursuant to Section 4006 of the Business and Professions Code. ''Dangerous drug'' does not include labeled veterinary drugs.

(b) ''Medical or health professional'' means any of the following:

(1) A person licensed by state law to prescribe drugs for human patients.

(2) A medical student.

(3) A member of a drug formulary committee.

(c) ''Pharmaceutical company'' means an entity that is engaged in the production, preparation, propagation, compounding, conversion, or processing of dangerous drugs, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis. ''Pharmaceutical company'' also means an entity engaged in the packaging, repackaging, labeling, relabeling, or distribution of dangerous drugs. ''Pharmaceutical company'' also includes a person who engages in pharmaceutical detailing, promotional activities, or other marketing of a dangerous drug in this state on behalf of a pharmaceutical company. ''Pharmaceutical company'' does not include a licensed pharmacist.

119402. (a) Every pharmaceutical company shall adopt a Comprehensive Compliance Program that is in accordance with the April 2003 publication ''Compliance Program Guidance for Pharmaceutical Manufacturers,'' which was developed by the United States Department of Health and Human Services Office of Inspector General (OIG). A pharmaceutical company shall make conforming changes to its Comprehensive Compliance Program within six months of any update or revision to the ''Compliance Program Guidance for Pharmaceutical Manufacturers.''

(b) Every pharmaceutical company shall include in its Comprehensive Compliance Program policies for compliance with the Pharmaceutical Research and Manufacturers of America (PhRMA) ''Code on Interactions with Health Care Professionals,'' dated July 1, 2002. The pharmaceutical company shall make conforming changes to its Comprehensive Compliance Program within six months of any update or revision of the ''Code on Interactions with Health Care Professionals.''

(c) Each pharmaceutical company shall include in its Comprehensive Compliance Program limits on gifts or incentives provided to medical or health professionals, in accordance with this chapter.

(d) (1) Each pharmaceutical company shall establish explicitly in its Comprehensive Compliance Program a specific annual dollar limit on gifts, promotional materials, or items or activities that the pharmaceutical company may give or otherwise provide to an individual medical or health care professional in accordance with the ''Compliance Program Guidance for Pharmaceutical Manufacturers'' and with the ''Code on Interactions with Health Care Professionals.''

(2) Notwithstanding paragraph (1), drug samples given to physicians and healthcare professionals intended for free distribution to patients, financial support for continuing medical education forums, and financial support for health educational scholarships are exempt from any limits if that support is provided in a manner that conforms to the ''Compliance Program Guidance for Pharmaceutical Manufacturers'' and the ''Code on Interactions with Health Care Professionals.''

(3) Payments made for legitimate professional services provided by a health care or medical professional, including, but not limited to, consulting, are exempt from any limits, provided that the payment does not exceed the fair market value of the services rendered, and those payments are provided in a manner that conforms to the ''Compliance Program Guidance for Pharmaceutical Manufacturers'' and with the ''Code on Interactions with Health Care Professionals.''

(e) The pharmaceutical company shall annually declare, in writing, that it is in compliance with both its Comprehensive Compliance Program and this chapter. The pharmaceutical company shall make its

Comprehensive Compliance Program and its annual written declaration of compliance with the program available to the public on the pharmaceutical company's Web site and shall also provide a toll-free telephone number where a copy or copies of the Comprehensive Compliance Program and written declaration of compliance may be obtained.

(f) This section shall become operative on July 1, 2005.

CHAPTER 928

An act to amend Section 65915 of the Government Code, relating to housing.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 2004.]

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

SECTION 1. Section 65915 of the Government Code is amended to read:

65915. (a) When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local government shall provide the applicant incentives or concessions for the production of housing units and child care facilities as prescribed in this section. All cities, counties, or cities and counties shall adopt an ordinance that specifies how compliance with this section will be implemented.

(b) A city, county, or city and county shall grant a density bonus and incentives or concessions described in subdivision (d) when the applicant for the housing development seeks and agrees to construct at least any one of the following:

(1) Ten percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(2) Five percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.

(3) A senior citizen housing development as defined in Sections 51.3 and 51.12 of the Civil Code.

(4) Ten percent of the total dwelling units in a condominium project as defined in subdivision (f) of, or in a planned development as defined in subdivision (k) of, Section 1351 of the Civil Code, for persons and

families of moderate income, as defined in Section 50093 of the Health and Safety Code.

(c) (1) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of all lower income density bonus units for 30 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Those units targeted for lower income households, as defined in Section 50079.5 of the Health and Safety Code, shall be affordable at a rent that does not exceed 30 percent of 60 percent of area median income. Those units targeted for very low income households, as defined in Section 50105 of the Health and Safety Code, shall be affordable at a rent that does not exceed 30 percent of 50 percent of area median income.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure that, the initial occupant of the moderate-income units that are directly related to the receipt of the density bonus in the condominium project as defined in subdivision (f) of, or in the planned unit development as defined in subdivision (k) of, Section 1351 of the Civil Code, are persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code. Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller's proportionate share of appreciation. The local government shall recapture its proportionate share of appreciation, which shall then be used within three years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote homeownership. For purposes of this subdivision, the local government's proportionate share of appreciation shall be equal to the percentage by which the initial sale price to the moderate-income household was less than the fair market value of the home at the time of initial sale.

(d) (1) An applicant may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of either of the following:

(A) The concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(B) The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or

on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.

(2) The applicant shall receive the following number of incentives or concessions:

(A) One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least 5 percent for very low income households, or at least 10 percent for persons and families of moderate income in a condominium or planned development.

(B) Two incentives or concessions for projects that include at least 20 percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a condominium or planned development.

(C) Three incentives or concessions for projects that include at least 30 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a condominium or planned development.

(3) The applicant may initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources. The city, county, or city and county shall establish procedures for carrying out this section, that shall include legislative body approval of the means of compliance with this section. The city, county, or city and county shall also establish procedures for waiving or modifying development and zoning standards that would otherwise inhibit the utilization of the density bonus on specific sites. These procedures shall include, but not be limited to, such items as minimum lot size, side yard setbacks, and placement of public works improvements.

(e) In no case may a city, county, or city and county apply any development standard that will have the effect of precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. An applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards and may request a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources.

(f) The applicant shall show that the waiver or modification is necessary to make the housing units economically feasible.

(g) (1) For the purposes of this chapter, except as provided in paragraph (2), ''density bonus'' means a density increase of at least 20 percent, unless a lesser percentage is elected by the applicant, over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the applicant to the city, county, or city and county. The amount of density bonus to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b). For each 1 percent increase above 10 percent in the percentage of units affordable to lower income households, the density bonus shall be increased by 1.5 percent up to a maximum of 35 percent. For each 1 percent increase above 5 percent in the percentage of units affordable to very low income households, the density bonus shall be increased by 2.5 percent up to a maximum of 35 percent. All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. The density bonus shall not be included when determining the number of housing units that is equal to 5 or 10 percent of the total. The density bonus shall apply to housing developments consisting of five or more dwelling units.

(2) For the purposes of this chapter, if a development does not meet the requirements of paragraph (1), (2), or (3) of subdivision (b), but the applicant agrees or proposes to construct a condominium project as defined in subdivision (f) of, or a planned development as defined in subdivision (k) of, Section 1351 of the Civil Code, in which at least 10 percent of the total dwelling units are reserved for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, a ''density bonus'' of at least 5 percent shall be granted, unless a lesser percentage is elected by the applicant, over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the applicant to the city, county, or city and county. For each 1 percent increase above 10 percent of the percentage of units affordable to moderate-income households, the density bonus shall be increased by 1 percent up to a maximum of 35 percent. All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. The density bonus shall not be included when determining the number of housing units that is equal to 10 percent of the total. The density bonus shall apply to housing developments consisting of five or more dwelling units.

(h) When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city, county, or city and county as provided for in this subdivision, the applicant shall be entitled to a 15 percent increase above the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan for the entire development. For each 1 percent increase above the minimum 10 percent land donation described in paragraph (2) of this subdivision, the density bonus shall be increased by 1 percent, up to a maximum of 35 percent. This increase shall be in addition to any increase in density mandated by subdivision (b), up to a maximum combined mandated density increase of 35 percent if an applicant seeks both the increase required pursuant to this subdivision and subdivision (b). All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this subdivision shall be construed to enlarge or diminish the authority of a city, county, or city and county to require a developer to donate land as a condition of development. An applicant shall be eligible for the increased density bonus described in this subdivision if all of the following conditions are met:

(1) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.

(2) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development.

(3) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned for development as affordable housing, and is or will be served by adequate public facilities and infrastructure. The land shall have appropriate zoning and development standards to make the development of the affordable units feasible. No later than the date of approval of the final subdivision map, parcel map, or of the residential development, the transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, except that the local government may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 if the design is not reviewed by the local government prior to the time of transfer.

(4) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c), which shall be recorded on the property at the time of dedication.

(5) The land is transferred to the local agency or to a housing developer approved by the local agency. The local agency may require the applicant to identify and transfer the land to the developer.

(6) The transferred land shall be within the boundary of the proposed development or, if the local agency agrees, within one-quarter mile of the boundary of the proposed development.

(i) (1) When an applicant proposes to construct a housing development that conforms to the requirements of subdivision (b) and includes a child care facility that will be located on the premises of, as part of, or adjacent to, the project, the city, county, or city and county shall grant either of the following:

(A) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility.

(B) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

(2) The city, county, or city and county shall require, as a condition of approving the housing development, that the following occur:

(A) The child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the

density bonus units are required to remain affordable pursuant to subdivision (c).

(B) Of the children who attend the child care facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income pursuant to subdivision (b).

(3) Notwithstanding any requirement of this subdivision, a city, county, or a city and county shall not be required to provide a density bonus or concession for a child care facility if it finds, based upon substantial evidence, that the community has adequate child care facilities.

(4) ''Child care facility,'' as used in this section, means a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and schoolage child care centers.

(j) ''Housing development,'' as used in this section, means one or more groups of projects for residential units constructed in the planned development of a city, county, or city and county. For the purposes of this section, ''housing development'' also includes a subdivision or a planned unit development or condominium project, as defined in Section 1351 of the Civil Code, approved by a city, county, or city and county and consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

(k) The granting of a concession or incentive shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. This provision is declaratory of existing law.

(*l*) For the purposes of this chapter, concession or incentive means any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code,

including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable, financially sufficient, and actual cost reductions.

(2) Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable, financially sufficient, and actual cost reductions.

This subdivision does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(m) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code).

(n) Nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.

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

(1) ''Development standard'' includes site or construction conditions that apply to a residential development pursuant to any ordinance, general plan element, specific plan, charter amendment, or other local condition, law, policy, resolution, or regulation.

(2) ''Maximum allowable residential density'' means the density allowed under the zoning ordinance, or if a range of density is permitted, means the maximum allowable density for the specific zoning range applicable to the project.

(p) (1) Upon the request of the developer, no city, county, or city and county shall require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivision (b), that exceeds the following ratios:

(A) Zero to one bedrooms: one onsite parking space.

(B) Two to three bedrooms: two onsite parking spaces.

(C) Four and more bedrooms: two and one-half parking spaces.

(2) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subdivision, a development may provide ''onsite parking'' through tandem parking or uncovered parking, but not through onstreet parking.

(3) This subdivision shall apply to a development that meets the requirements of subdivision (b) but only at the request of the applicant. An applicant may request additional parking incentives or concessions beyond those provided in this section, subject to subdivision (d).

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 929

An act to amend Sections 19227 and 19315 of, to amend, repeal, and add Section 15061 of, and to add Sections 19310.7 and 19317 to, the Food and Agricultural Code, relating to commercial feed, and making an appropriation therefor.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 2004.]

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

SECTION 1. Section 15061 of the Food and Agricultural Code is amended to read:

15061. (a) An inspection tonnage tax at the maximum rate of fifteen cents ($0.15) per ton of commercial feed sold, except whole grains, and whole hays when unmixed, shall be paid to the secretary by any person who distributes commercial feed to a consumer-buyer in this state. The distributor shall also pay an inspection tonnage tax for purchased commercial feed fed to his or her own animals.

(b) The secretary may, based upon a finding and recommendation of the Feed Inspection Advisory Board, determine the specific rate necessary to provide the revenue needed to carry out the provisions of this chapter. The secretary and the Feed Inspection Advisory Board shall not exceed the maximum tonnage rate established by this section. Setting the tonnage tax rate shall not be subject to Chapter 3.5

(commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) The secretary may, based upon a finding and recommendation of the Feed Inspection Advisory Board, designate 15 percent of the tonnage taxes collected, or two hundred thousand dollars ($200,000), whichever amount is greater, to provide funding for research and education regarding the safe manufacture, distribution, and use of commercial feed. These funds may only be spent on activities approved by the Feed and Inspection Advisory Board, with approval being made prior to any expenditure.

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

SEC. 2. Section 15061 is added to the Food and Agricultural Code, to read:

15061. (a) An inspection tonnage tax at the maximum rate of fifteen cents ($0.15) per ton of commercial feed sold, except whole grains, and whole hays when unmixed, shall be paid to the secretary by any person who distributes commercial feed to a consumer-buyer in this state. The distributor shall also pay an inspection tonnage tax for purchased commercial feed fed to his or her own animals.

(b) The secretary may, based upon a finding and recommendation of the Feed Inspection Advisory Board, determine the specific rate necessary to provide the revenue needed to carry out the provisions of this chapter. The secretary and the Feed Inspection Advisory Board shall not exceed the maximum tonnage rate established by this section. Setting the tonnage tax rate shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) This section shall become operative on January 1, 2010.

SEC. 3. Section 19227 of the Food and Agricultural Code is amended to read:

19227. (a) In addition to the license fee required pursuant to Section 19225, the department may charge each licensed renderer and collection center an additional fee necessary to cover the costs of administering Article 6 (commencing with Section 19300) and Article 6.5 (commencing with Section 19310). The additional fees authorized to be imposed by this section may not exceed three thousand dollars ($3,000) per year per each licensed rendering plant or collection center.

(b) The secretary shall fix the annual fee established pursuant to this section and may fix different fees for renderers and collection centers. The secretary shall also fix the date the fee is due and the method of collecting the fee. If an additional fee is imposed on licensed renderers pursuant to subdivision (a) and an additional fee is imposed on registered

transporters pursuant to subdivision (a) of Section 19315, only one additional fee may be imposed on a person or firm that is both licensed as a renderer pursuant to Article 6 (commencing with Section 19300) and registered as a transporter of inedible kitchen grease pursuant to Article 6.5 (commencing with Section 19310), which fee shall be the higher of the two fees.

(c) If the fee established pursuant to this section is not paid within one calendar month of the date it is due, a penalty shall be imposed in the amount of 10 percent per annum on the amount of the unpaid fee.

(d) This section shall become inoperative on July 1, 2010, and, as of January 1, 2011, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 4. Section 19310.7 is added to the Food and Agricultural Code, to read:

19310.7. Any person registered as a transporter or licensed as a renderer of inedible kitchen grease may deliver any inedible kitchen grease to a licensed renderer or collection center for processing or recycling into usable products. As used in this section, ''usable products'' includes, but is not limited to, biofuels, lubricants, and animal feed, provided the uses for animal feed are permitted by the rules and regulations adopted by the United States Food and Drug Administration.

SEC. 5. Section 19315 of the Food and Agricultural Code is amended to read:

19315. (a) In addition to the registration fee required by Section 19312, the department may charge an additional fee necessary to cover the costs of administering this article. Any additional fee charged pursuant to this section shall not exceed three hundred dollars ($300) per year per vehicle that is operated to transport kitchen grease, and shall not exceed three thousand dollars ($3,000) per year per registered transporter.

(b) The secretary shall fix the annual fee established pursuant to this section and may fix different fees for transporters of inedible kitchen grease and collection centers. The secretary shall also fix the date the fee is due and the method of collecting the fee. If an additional fee is imposed on licensed renderers pursuant to subdivision (a) of Section 19227 and an additional fee is imposed on registered transporters pursuant to subdivision (a), only one additional fee may be imposed on a person or firm that is both licensed as a renderer pursuant to Article 6 (commencing with Section 19300) and registered as a transporter of inedible kitchen grease pursuant to this article, which fee shall be the higher of the two fees.

(c) If the fee established pursuant to this section is not paid within one calendar month of the date it is due, a penalty shall be imposed in the amount of 10 percent per annum on the amount of the unpaid fee.

(d) This section shall become inoperative on July 1, 2010, and, as of January 1, 2011, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 6. Section 19317 is added to the Food and Agricultural Code, to read:

19317. A registered transporter of inedible kitchen grease shall, whenever any contract for the transportation of inedible kitchen grease under which that transporter provides transportation services is terminated or expires, notify the county health officer for the county in which the inedible kitchen grease was collected of the termination or expiration of the contract and that the registered transporter is no longer transporting inedible kitchen grease pursuant to that contract.

CHAPTER 930

An act to add and repeal Section 16490 of the Public Utilities Code, relating to the Trinity Public Utility District, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 2004.]

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

SECTION 1. Section 16490 is added to the Public Utilities Code, to read:

16490. (a) The Trinity Public Utility District may exercise the powers of a health care district pursuant to the Local Health Care District Law (Division 23 (commencing with Section 32000) of the Health and Safety Code).

(b) Notwithstanding Section 16467, the facilities and services provided pursuant to this section need not be financed on a self-sustaining, revenue-producing basis. Revenue to defray the cost of the facilities and services may be raised in any manner authorized by this division.

(c) To carry out the purposes of this section, the district may form a nonprofit public benefit corporation pursuant to the Nonprofit Corporation Law (Division 2 (commencing with Section 5000) of the Corporations Code).

(d) 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. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances of the Trinity Public Utility District. The facts constituting the special circumstances are:

The County of Trinity faces severe fiscal problems with the continued operation of the Trinity General Hospital. The potential financial collapse of the Trinity General Hospital poses a serious threat to the public health and safety of the residents of Trinity County. Local residents, taxpayers, and public officials are exploring organizational alternatives, including the formation of a new health care district. Until they select and implement an alternative, the County of Trinity has determined that the Trinity Public Utility District is the most reasonable alternative local agency to assume responsibility over the operation of the Trinity County Hospital. Because the Public Utility District Act (Division 7 (commencing with Section 15501) of the Public Utilities Code) does not authorize a public utility district to operate a hospital, it is necessary for the Legislature to enact a special act which allows the Trinity Public Utility District to exercise the powers of a health care district.

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 County of Trinity faces severe fiscal problems with the continued operation of the Trinity General Hospital. The potential financial collapse of the Trinity General Hospital poses a serious threat to the public health and safety of the residents of Trinity County. An urgency statute is essential to allow local officials to transfer the operation of the Trinity County Hospital to the Trinity Public Utility District at the earliest possible time.

CHAPTER 931

An act to add Chapter 2.65 (commencing with Section 65089.11) to Division 1 of Title 7 of the Government Code, and to add Section 9250.5 to the Vehicle Code, relating to local government.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 2004.]

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

SECTION 1. Chapter 2.65 (commencing with Section 65089.11) is added to Division 1 of Title 7 of the Government Code, to read:

CHAPTER 2.65. MANAGEMENT OF TRAFFIC CONGESTION AND STORMWATER POLLUTION IN SAN MATEO COUNTY

65089.11. (a) The City/County Association of Governments of San Mateo County, which has been formed by the resolutions of the board of supervisors within San Mateo County and a majority of the city councils within the county that represent a majority of the population in the incorporated area of San Mateo County, may impose a fee of up to four dollars ($4) on motor vehicles registered within San Mateo County. The City/County Association of Governments of San Mateo County may impose the fee only if the board of the association adopts a resolution providing for both the fee and a corresponding program for the management of traffic congestion and stormwater pollution within San Mateo County as set forth in Sections 65089.12 to 65089.15, inclusive. Adoption by the board requires a vote of approval by board members representing two-thirds of the population of San Mateo County.

(b) A fee imposed pursuant to this section shall not become operative until July 1, 2005, pursuant to the resolution adopted by the board in subdivision (a).

(c) The fee shall terminate on January 1, 2009, unless reauthorized by the Legislature.

65089.12. (a) The fees distributed to the City/County Association of Governments of San Mateo County pursuant to Section 9250.5 of the Vehicle Code shall be used for purposes of congestion management and stormwater pollution prevention as specified in its adopted congestion management program, pursuant to Section 65089, and its approved National Pollutant Discharge Elimination System permit issued pursuant to the federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.).

(b) (1) The fees collected may be used to pay for those programs with a relationship or benefit to the motor vehicles that are paying the fee.

(2) Prior to imposing the fee, the board of the association shall make a finding of fact by a $^2/_3$ vote that those programs bear a relationship or benefit to the motor vehicles that will pay the fee.

(c) The purpose of the Congestion Management Program is to address motor vehicle congestion.

(d) Only the stormwater pollution prevention programs that directly address the negative impact on creeks, streams, bays, and the ocean

caused by motor vehicles and the infrastructure supporting motor vehicle travel are eligible for funding.

(e) Not more than 5 percent of the fees distributed to the City/County Association of Governments of San Mateo County shall be used by the association for its administrative costs associated with the program.

65089.13. Prior to the imposition of the fee by the City/County Association of Governments of San Mateo County, a specific program with performance measures and a budget shall first be developed and adopted by the association at a noticed public hearing.

65089.14. The City/County Association of Governments of San Mateo County shall have an independent audit performed on the program with the review and report provided to the board at a noticed public hearing.

65089.15. The City/County Association of Governments of San Mateo County shall provide a report to the Legislature on the program by July 1, 2006.

SEC. 2. Section 9250.5 is added to the Vehicle Code, to read:

9250.5. (a) The department shall, if requested by the City/County Association of Governments of San Mateo County, collect the fee imposed pursuant to Section 65089.11 of the Government Code upon the registration or renewal of registration of any motor vehicle registered in the county, except those vehicles that are expressly exempted under this code from the payment of registration fees.

(b) The City/County Association of Governments of San Mateo County shall pay for the initial setup and programming costs identified by the Department of Motor Vehicles through a direct contract with the department. Any direct contract payment by the City/County Association of Governments of San Mateo County shall be repaid, with no restriction on the funds, to the City/County Association of Governments of San Mateo County as part of the initial revenues distributed. Regular Department of Motor Vehicles collection costs shall be in accordance with subdivision (c). These costs shall not be counted against the 5-percent administration cost limit specified in subdivision (e) of Section 65089.12.

(c) After deducting all costs incurred pursuant to this section, the department shall distribute the revenues to the City/County Association of Governments of San Mateo County.

CHAPTER 932

An act to add Section 18901.3 to the Welfare and Institutions Code, relating to human services.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 2004.]

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

SECTION 1. Section 18901.3 is added to the Welfare and Institutions Code, to read:

18901.3. (a) Subject to the limitations of subdivision (b), pursuant to Section 115(d)(1)(A) of Public Law 104-193 (21 U.S.C. Sec. 862a(d)(1)(A)), California opts out of the provisions of Section 115(a)(2) of Public Law 104-193 (21 U.S.C. Sec. 862a(a)(2)). A convicted drug felon shall be eligible to receive food stamps under this section.

(b) Subdivision (a) does not apply to a person who has been convicted of unlawfully transporting, importing into this state, selling, furnishing, administering, giving away, possessing for sale, purchasing for purposes of sale, manufacturing a controlled substance, possessing precursors with the intent to manufacture a controlled substance, or cultivating, harvesting, or processing marijuana or any part thereof pursuant to Section 11358 of the Health and Safety Code.

(c) Subdivision (a) does not apply to a person who has been convicted of unlawfully soliciting, inducing, encouraging, or intimidating a minor to participate in any activity listed in subdivision (b).

(d) As a condition of eligibility to receive food stamps pursuant to subdivision (a), an applicant convicted of a felony drug offense that is not excluded under subdivision (b) or (c) shall be required to provide proof of one of the following subsequent to the most recent drug-related conviction:

(1) Completion of a government-recognized drug treatment program.

(2) Participation in a government-recognized drug treatment program.

(3) Enrollment in a government-recognized drug treatment program.

(4) Placement on a waiting list for a government-recognized drug treatment program.

(5) Other evidence that the illegal use of controlled substances has ceased, as established by State Department of Social Services regulations.

(e) 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 this section through an all-county letter or similar instructions from the director no later than January 1, 2005.

(f) The department shall adopt regulations as otherwise necessary to implement this section no later than July 1, 2005. Emergency regulations

adopted for implementation of this section may be adopted by the director in accordance with the Administrative Procedure Act. The adoption of emergency regulations shall be deemed to be an emergency and necessary for immediate preservation of the public peace, health and safety, or general welfare. The emergency regulations shall be exempt from review by the Office of Administrative Law. The emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and shall remain in effect for no more than 180 days.

SEC. 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 933

An act to add Section 12950.1 to the Government Code, relating to employment practices.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 2004.]

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

SECTION 1. Section 12950.1 is added to the Government Code, to read:

12950.1. (a) By January 1, 2006, an employer having 50 or more employees shall provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees who are employed as of July 1, 2005, and to all new supervisory employees within six months of their assumption of a supervisory position. Any employer who has provided this training and education to a supervisory employee after January 1, 2003, is not required to provide training and education by the January 1, 2006, deadline. After January 1, 2006, each employer covered by this section shall provide sexual harassment training and education to each supervisory employee once every two years. The training and education required by this section shall include information and practical guidance regarding the federal and state statutory provisions concerning the

prohibition against and the prevention and correction of sexual harassment and the remedies available to victims of sexual harassment in employment. The training and education shall also include practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation, and shall be presented by trainers or educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation.

(b) The state shall incorporate the training required by subdivision (a) into the 80 hours of training provided to all new supervisory employees pursuant to subdivision (b) of Section 19995.4 of the Government Code, using existing resources.

(c) For purposes of this section only, ''employer'' means any person regularly employing 50 or more persons or regularly receiving the services of 50 or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities.

(d) Notwithstanding subdivisions (j) and (k) of Section 12940, a claim that the training and education required by this section did not reach a particular individual or individuals shall not in and of itself result in the liability of any employer to any present or former employee or applicant in any action alleging sexual harassment. Conversely, an employer's compliance with this section does not insulate the employer from liability for sexual harassment of any current or former employee or applicant.

(e) If an employer violates the requirements of this section, the commission shall issue an order requiring the employer to comply with these requirements.

(f) The training and education required by this section is intended to establish a minimum threshold and should not discourage or relieve any employer from providing for longer, more frequent, or more elaborate training and education regarding workplace harassment or other forms of unlawful discrimination in order to meet its obligations to take all reasonable steps necessary to prevent and correct harassment and discrimination.

CHAPTER 934

An act to amend Sections 24216, 24216.5, and 24216.6 of the Education Code, relating to state teachers' retirement.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 2004.]

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

SECTION 1. Section 24216 of the Education Code is amended to read:

24216. (a) (1) A member retired for service under this part who is appointed as a trustee or administrator by the Superintendent of Public Instruction pursuant to Section 41320.1, or a member retired for service who is assigned by a county superintendent of schools pursuant to Article 2 (commencing with Section 42120) of Chapter 6 of Part 24, shall be exempt from subdivisions (d) and (f) of Section 24214 for a maximum period of two years.

(2) The period of exemption shall commence on the date the member retired for service is appointed or assigned and shall end no more than two calendar years from that date, after which the limitation specified in subdivisions (d) and (f) of Section 24214 shall apply.

(3) An exemption under this subdivision shall be granted by the system providing that the Superintendent of Public Instruction or the county superintendent of schools submits documentation required by the system to substantiate the eligibility of the member retired for service for an exemption under this subdivision.

(b) (1) A member retired for service under this part who is employed by an employer to perform creditable service in an emergency situation to fill a vacant administrative position requiring highly specialized skills shall be exempt from the provisions of subdivisions (d) and (f) of Section 24214 for creditable service performed up to one-half of the full-time equivalent for that position, if the vacancy occurred due to circumstances beyond the control of the employer.

(2) The period of exemption shall commence on the date the member retired for service is appointed or assigned and shall end no more than two calendar years from that date, after which the limitation specified in subdivisions (d) and (f) of Section 24214 shall apply.

(3) An exemption under this subdivision shall be granted by the system subject to the following conditions:

(A) The recruitment process to fill the vacancy on a permanent basis is expected to extend over several months.

(B) A member retired for service under this part who is employed to fill the vacancy shall be employed to fill the vacancy for no more than a single two-year term under this exemption.

(C) The employment is reported in a public meeting of the governing body of the employer.

(D) The employer submits documentation required by the system to substantiate the eligibility of the member retired for service for an exemption under this subdivision.

(c) This section does not apply to any person who has received additional service credit pursuant to Section 22715 or 22716.

(d) A person who has received additional service credit pursuant to Section 22714 or 22714.5 shall be ineligible for one year from the effective date of retirement for the exemption provided in this section for service performed in the district from which he or she retired.

(e) This section shall 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 24216 of the Education Code is amended to read:

24216. (a) (1) A member retired for service under this part who is appointed as a trustee or administrator by the Superintendent of Public Instruction pursuant to Section 41320.1, or a member retired for service who is assigned by a county superintendent of schools pursuant to Article 2 (commencing with Section 42120) of Chapter 6 of Part 24, shall be exempt from subdivisions (d) and (f) of Section 24214 for a maximum period of two years.

(2) The period of exemption shall commence on the date the member retired for service is appointed or assigned and shall end no more than two calendar years from that date, after which the limitation specified in subdivisions (d) and (f) of Section 24214 shall apply.

(3) An exemption under this subdivision shall be granted by the system providing that the Superintendent of Public Instruction or the county superintendent of schools submits documentation required by the system to substantiate the eligibility of the member retired for service for an exemption under this subdivision.

(b) (1) A member retired for service under this part who is employed by an employer to perform creditable service in an emergency situation to fill a vacant administrative position requiring highly specialized skills shall be exempt from the provisions of subdivisions (d) and (f) of Section 24214 for creditable service performed up to one-half of the full-time equivalent for that position, if the vacancy occurred due to circumstances beyond the control of the employer.

(2) The period of exemption shall commence on the date the member retired for service is appointed or assigned and shall end no more than two calendar years from that date, after which the limitation specified in subdivisions (d) and (f) of Section 24214 shall apply.

(3) An exemption under this subdivision shall be granted by the system subject to the following conditions:

(A) The recruitment process to fill the vacancy on a permanent basis is expected to extend over several months.

(B) A member retired for service under this part who is employed to fill the vacancy shall be employed to fill the vacancy for no more than a single two-year term under this exemption.

(C) The employment is reported in a public meeting of the governing body of the employer.

(D) The employer submits documentation required by the system to substantiate the eligibility of the member retired for service for an exemption under this subdivision.

(c) This section does not apply to any person who has received additional service credit pursuant to Section 22715 or 22716.

(d) A person who has received additional service credit pursuant to Section 22714 or 22714.5 shall be ineligible for one year from the effective date of retirement for the exemption provided in this section for service performed in any school district, community college district, or county office of education in the state.

(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. 2. Section 24216.5 of the Education Code is amended to read:

24216.5. (a) The compensation earned by a member who retired for service under this part shall be exempt from subdivisions (d), (f), and (g) of Section 24214, if all of the following conditions are met:

(1) The member retired for service with an effective date on or before January 1, 2004.

(2) The member retired for service is employed by a school district to provide any of the following:

(A) Direct classroom instruction to pupils enrolled in kindergarten or any grades 1 to 12, inclusive.

(B) Support and assessment for new teachers through the Beginning Teacher Support and Assessment program authorized by Section 44279.1.

(C) Support to individuals completing student teaching assignments.

(D) Support to individuals participating in the following programs:

(i) Pre-Internship Teaching Program authorized pursuant to Article 5.6 (commencing with Section 44305) of Chapter 2 of Part 25.

(ii) Alternative certification programs authorized pursuant to Article 11 (commencing with Section 44380) of Chapter 2 of Part 25.

(iii) School Paraprofessional Teacher Training Program established pursuant to Article 12 (commencing with Section 44390) of Chapter 2 of Part 25.

(E) Instruction and pupil services provided to pupils enrolled in special education programs authorized pursuant to Part 30 (commencing with Section 56000) of Division 4 of Title 2.

(F) Instruction to pupils enrolled in English language learner programs authorized pursuant to Chapter 3 (commencing with Section 300), Chapter 4 (commencing with Section 400), and Chapter 6 (commencing with Section 430) of Part 1 of Division 1.

(3) All members retired for service whose employment with a school district meets the conditions specified in this section shall be treated as a distinct class of temporary employees within the existing bargaining unit whose service may not be included in computing the service required as a prerequisite to attainment of or eligibility for classification as a permanent employee of a school district. The compensation for service performed by this class of employees shall be established in accordance with subdivision (b) of Section 24214 and agreed to in the collective bargaining agreement between the employing school district and the exclusive representative for the existing bargaining unit within which these temporary employees of the school district are treated as a distinct class.

(4) The employing school district submits documentation required by the system to substantiate the eligibility of the temporary employment of a member retired for service for the exemption under this subdivision.

(b) A school district that employs a member retired for service pursuant to this section shall maintain accurate records of the retired member's compensation earned and shall report that compensation monthly to the system regardless of the method of payment or the source of funds from which the compensation is paid.

(c) This section does not apply to the compensation earned for creditable service performed by a member retired for service for a community college district.

(d) 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. 3. Section 24216.6 of the Education Code is amended to read:

24216.6. (a) The compensation earned by a member who retired for service under this part shall be exempt from subdivisions (d), (f), and (g) of Section 24214, if all of the following conditions are met:

(1) The member retired for service with an effective date on or before January 1, 2004.

(2) The member retired for service is employed by a school district to provide direct remedial instruction to pupils in grades 2 to 12, inclusive. ''Remedial instruction'' means the programs specified in Sections 37252 and 37252.2.

(3) All members retired for service whose employment with a school district meets the conditions specified in this section shall be treated as a distinct class of temporary employees within the existing bargaining unit whose service may not be included in computing the service required as a prerequisite to attainment of or eligibility for classification as a permanent employee of a school district. The compensation for service performed by this class of employees shall be established in

accordance with subdivision (b) of Section 24214 and agreed to in the collective bargaining agreement between the employing school district and the exclusive representative for the existing bargaining unit within which these temporary employees of the school district are treated as a distinct class.

(4) The employing school district submits documentation required by the system to substantiate the eligibility of the temporary employment of a member retired for service for the exemption under this subdivision.

(b) A school district that employs a member retired for service pursuant to this section shall maintain accurate records of the retired member's compensation earned and shall report that compensation monthly to the system regardless of the method of payment or the source of funds from which the compensation is paid.

(c) This section does not apply to the compensation earned for creditable service performed by a member retired for service for a county office of education or a community college district.

SEC. 4. Section 1.5 of this bill incorporates amendments to Section 24216 of the Education Code proposed by both this bill and AB 2753. 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 24216 of the Education Code, and (3) this bill is enacted after AB 2753, in which case Section 1 of this bill shall not become operative.

CHAPTER 935

An act to amend Sections 22714, 22714.5, 24216, 24221, and 84040.5 of the Education Code, relating to state teachers' retirement, and making an appropriation therefor.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 2004.]

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

SECTION 1. Section 22714 of the Education Code is amended to read:

22714. (a) Whenever the governing board of a school district or a community college district or a county office of education, by formal action, determines pursuant to Section 44929 or 87488 that because of impending curtailment of or changes in the manner of performing services, the best interests of the district or county office of education would be served by encouraging certificated employees or academic

employees to retire for service and that the retirement will result in a net savings to the district or county office of education, an additional two years of service credit shall be granted under this part to a member of the Defined Benefit Program if all of the following conditions exist:

(1) The member is credited with five or more years of service credit and retires for service under Chapter 27 (commencing with Section 24201) during a period of not more than 120 days or less than 60 days, commencing no sooner than the effective date of the formal action of the employer that shall specify the period.

(2) The employer transfers to the retirement fund an amount determined by the Teachers' Retirement Board to equal the actuarial equivalent of the difference between the allowance the member receives after receipt of service credit pursuant to this section and the amount the member would have received without the service credit and an amount determined by the Teachers' Retirement Board to equal the actuarial equivalent of the difference between the purchasing power protection supplemental payment the member receives after receipt of service credit pursuant to this section and the amount the member would have received without the service credit. The payment for purchasing power shall be deposited in the Supplemental Benefit Maintenance Account established by Section 22400 and shall be subject to Section 24415. The transfer to the retirement fund shall be made in a manner and a time period, not to exceed eight years, that is acceptable to the Teachers' Retirement Board. The employer shall transfer the required amount for all eligible employees who retire pursuant to this section.

(3) The employer transmits to the retirement fund the administrative costs incurred by the system in implementing this section, as determined by the Teachers' Retirement Board.

(4) The employer has considered the availability of teachers or academic employees to fill the positions that would be vacated pursuant to this section.

(b) (1) The school district shall demonstrate and certify to the county superintendent that the formal action taken would result in a net savings to the district.

(2) The county superintendent shall certify to the Teachers' Retirement Board that the result specified in paragraph (1) can be demonstrated. The certification shall include, but not be limited to, the information specified in subdivision (c) of Section 14502.1.

(3) The school district shall reimburse the county superintendent for all costs to the county superintendent that result from the certification.

(c) (1) The county office of education shall demonstrate and certify to the Superintendent of Public Instruction that the formal action taken would result in a net savings to the county office of education.

(2) The Superintendent of Public Instruction shall certify to the Teachers' Retirement Board that the result specified in paragraph (1) can be demonstrated. The certification shall include, but not be limited to, the information specified in subdivision (c) of Section 14502.1.

(3) The Superintendent of Public Instruction may request reimbursement from the county office of education for all administrative costs that result from the certification.

(d) (1) The community college district shall demonstrate and certify to the chancellor's office that the formal action taken would result in a net savings to the district.

(2) The chancellor shall certify to the Teachers' Retirement Board that the result specified in paragraph (1) can be demonstrated. The certification shall include, but not be limited to, the information specified in subdivision (c) of Section 84040.5.

(3) The chancellor may request reimbursement from the community college district for all administrative costs that result from the certification.

(e) The opportunity to be granted service credit pursuant to this section shall be available to all members employed by the school district, community college district, or county office of education who meet the conditions set forth in this section.

(f) The amount of service credit shall be two years.

(g) Any member of the Defined Benefit Program who retires under this part for service under Chapter 27 (commencing with Section 24201) with service credit granted under this section and who subsequently reinstates shall forfeit the service credit granted under this section.

(h) Any member of the Defined Benefit Program who retires under this part for service under Chapter 27 (commencing with Section 24201) with service credit granted under this section and who takes any job with the school district, community college district, or county office of education that granted the member the service credit less than five years after receiving the credit shall forfeit the ongoing benefit he or she receives from the additional service credit granted under this section.

(i) This section does not apply to any member otherwise eligible if the member receives any unemployment insurance payments arising out of employment with an employer subject to this part during a period extending one year beyond the effective date of the formal action, or if the member is not otherwise eligible to retire for service.

SEC. 2. Section 22714.5 of the Education Code is amended to read:

22714.5. (a) Notwithstanding Sections 22714, 44929, and 87488, an additional two years of service and an additional two years of age shall be credited under this part to a member of the Defined Benefit Program if the following conditions exist:

(1) The member is credited with five or more years of service credit and retires for service under the provisions of Chapter 27 (commencing with Section 24201) within the period designated in the memorandum of understanding or formal action described in paragraph (6).

(2) The employer determines that the best interests of the school district, community college district, or county office of education would be served by encouraging certificated or academic employees to retire for service and that the retirement will result in a net savings to the district or county office of education.

(3) The employer transfers to the retirement fund an amount determined by the Teachers' Retirement Board to equal the actuarial equivalent of the difference between the allowance the member receives after receipt of service and age credit pursuant to this section and the amount the member would have received without the service and age credit and an amount determined by the Teachers' Retirement Board to equal the actuarial equivalent of the difference between the purchasing power protection supplemental payment the member receives after receipt of service and age credit pursuant to this section and the amount the member would have received without the service and age credit. The payment for purchasing power shall be deposited in the Supplemental Benefit Maintenance Account established by Section 22400 and shall be subject to Section 24415. The transfer to the retirement fund shall be made in a manner and time period, not to exceed eight years, that is acceptable to the Teachers' Retirement Board.

(4) (A) A school district shall demonstrate and certify to the county superintendent that the formal action taken would result in a net savings to the district.

(B) The county superintendent shall certify to the Teachers' Retirement Board that the result specified in subparagraph (A) can be demonstrated. The certification shall include, but not be limited to, the information specified in subdivision (c) of Section 14502.1.

(C) The school district shall reimburse that county superintendent for all costs to the county superintendent that result from the certification.

(5) (A) The county office of education shall demonstrate and certify to the Superintendent of Public Instruction that the formal action taken would result in a net savings to the county office of education.

(B) The Superintendent of Public Instruction shall certify to the Teachers' Retirement Board that the result specified in subparagraph (A) can be demonstrated. The certification shall include, but not be limited to, the information specified in subdivision (c) of Section 14502.1.

(C) The Superintendent of Public Instruction may request reimbursement from the county office of education for all administrative costs that result from the certification.

(6) (A) A community college district shall demonstrate and certify to the chancellor's office that the formal action taken would result in a net savings to the district.

(B) The chancellor shall certify to the Teachers' Retirement Board that the result specified in subparagraph (A) can be demonstrated. The certification shall include, but not be limited to, the information specified in subdivision (c) of Section 84040.5.

(C) The chancellor may request reimbursement from the community college district for all administrative costs that result from the certification.

(7) This section has been made applicable to the employer and the member pursuant to a memorandum of understanding between the employer and the representative employee organization or, for members who are not represented by a representative employee organization, this section has been made applicable to all of the members employed by the school district, community college district, or county office of education, pursuant to a formal action of the governing board. The employer shall transfer the required amount for all eligible employees who retire pursuant to this section.

(8) The employer transmits to the retirement fund the administrative costs incurred by the system in implementing this section, as determined by the Teachers' Retirement Board.

(b) The amount of additional service credit and additional age shall each be two years regardless of credited service or age. A member of the Defined Benefit Program who is credited with additional age and service under this section may not be credited with additional service under Section 22714.

(c) Any member of the Defined Benefit Program who is credited with additional age and service under this section and who subsequently reinstates from retirement shall forfeit the additional age and service credit granted under this section.

(d) Any member of the Defined Benefit Program who retires under this part for service under Chapter 27 (commencing with Section 24201) with age and service credit granted under this section and who takes any job with the school district, community college district, or county office of education that granted the member the age and service credit less than five years after receiving the credit shall forfeit the ongoing benefit he or she receives from the additional age and service credit granted under this section.

(e) This section is not applicable to any member otherwise eligible if the member receives any unemployment insurance payments arising out of employment with an employer subject to this part during a period extending one year beyond the effective date of the memorandum of understanding or formal action, or if the member is not otherwise

eligible to retire for service without the additional age or service credit available under this section.

(f) This section shall become operative on January 1, 2004, or 120 days after Assembly Bill No. 1207 of the 2003–04 Regular Session is chaptered, whichever is later, and remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

SEC. 3. Section 24216 of the Education Code is amended to read:

24216. (a) (1) A member retired for service under this part who is appointed as a trustee or administrator by the Superintendent of Public Instruction pursuant to Section 41320.1, or a member retired for service who is assigned by a county superintendent of schools pursuant to Article 2 (commencing with Section 42120) of Chapter 6 of Part 24, shall be exempt from subdivisions (d) and (f) of Section 24214 for a maximum period of two years.

(2) The period of exemption shall commence on the date the member retired for service is appointed or assigned and shall end no more than two calendar years from that date, after which the limitation specified in subdivisions (d) and (f) of Section 24214 shall apply.

(3) An exemption under this subdivision shall be granted by the system providing that the Superintendent of Public Instruction or the county superintendent of schools submits documentation required by the system to substantiate the eligibility of the member retired for service for an exemption under this subdivision.

(b) (1) A member retired for service under this part who is employed by an employer to perform creditable service in an emergency situation to fill a vacant administrative position requiring highly specialized skills shall be exempt from the provisions of subdivisions (d) and (f) of Section 24214 for creditable service performed up to one-half of the full-time equivalent for that position, if the vacancy occurred due to circumstances beyond the control of the employer. The limitation specified in subdivisions (d) and (f) of Section 24214 shall apply to creditable service performed beyond the specified exemption.

(2) An exemption under this subdivision shall be granted by the system subject to the following conditions:

(A) The recruitment process to fill the vacancy on a permanent basis is expected to extend over several months.

(B) The employment is reported in a public meeting of the governing body of the employer.

(C) The employer submits documentation required by the system to substantiate the eligibility of the member retired for service for an exemption under this subdivision.

(c) This section does not apply to any person who has received additional service credit pursuant to Section 22715 or 22716.

(d) A person who has received additional service credit pursuant to Section 22714 or 22714.5 shall be ineligible for one year from the effective date of retirement for the exemption provided in this section for service performed in any school district, community college district, or county office of education in the state.

(e) This section shall become operative on January 1, 2001, and shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2008, deletes or extends that date.

SEC. 3.5. Section 24216 of the Education Code is amended to read:

24216. (a) (1) A member retired for service under this part who is appointed as a trustee or administrator by the Superintendent of Public Instruction pursuant to Section 41320.1, or a member retired for service who is assigned by a county superintendent of schools pursuant to Article 2 (commencing with Section 42122) of Chapter 6 of Part 24, shall be exempt from subdivisions (d) and (f) of Section 24214 for a maximum period of two years.

(2) The period of exemption shall commence on the date the member retired for service is appointed or assigned and shall end no more than two calendar years from that date, after which the limitation specified in subdivisions (d) and (f) of Section 24214 shall apply.

(3) An exemption under this subdivision shall be granted by the system providing that the Superintendent of Public Instruction or the county superintendent of schools submits documentation required by the system to substantiate the eligibility of the member retired for service for an exemption under this subdivision.

(b) (1) A member retired for service under this part who is employed by an employer to perform creditable service in an emergency situation to fill a vacant administrative position requiring highly specialized skills shall be exempt from the provisions of subdivisions (d) and (f) of Section 24214 for creditable service performed up to one-half of the full-time equivalent for that position, if the vacancy occurred due to circumstances beyond the control of the employer.

(2) The period of exemption shall commence on the date the member retired for service is appointed or assigned and shall end no more than two calendar years from that date, after which the limitation specified in subdivisions (d) and (f) of Section 24214 shall apply.

(3) An exemption under this subdivision shall be granted by the system subject to the following conditions:

(A) The recruitment process to fill the vacancy on a permanent basis is expected to extend over several months.

(B) The employment is reported in a public meeting of the governing body of the employer.

(C) The employer submits documentation required by the system to substantiate the eligibility of the member retired for service for an exemption under this subdivision.

(c) This section does not apply to any person who has received additional service credit pursuant to Section 22715 or 22716.

(d) A person who has received additional service credit pursuant to Section 22714 or 22714.5 shall be ineligible for one year from the effective date of retirement for the exemption provided in this section for service performed in any school district, community college district, or county office of education in the state.

(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. 4. Section 24221 of the Education Code is amended to read:

24221. (a) A member who retires for service prior to January 1, 2011, may elect, on a form prescribed by the system, to receive a lump-sum payment and an actuarially reduced monthly allowance pursuant to this section in lieu of the monthly unmodified allowance that would otherwise be payable to the member pursuant to this chapter. The election under this section shall be made at the time the member files his or her application for service retirement allowance as provided in Section 24204.

(b) A member who makes the election described in subdivision (a) shall receive a one-time, lump-sum payment in an amount that equals or does not exceed the lesser of the following amounts:

(1) The actuarial present value of the amount by which (A) the monthly unmodified allowance payable to the member pursuant to this chapter exceeds (B) an amount equal to 2 percent of the member's final compensation multiplied by the number of years of credited service and divided by 12.

(2) Fifteen percent of the actuarial present value of the monthly unmodified allowance payable to the member under this chapter.

(c) Notwithstanding any other provision of this part, a member who makes the election described in subdivision (a) shall receive a monthly unmodified allowance, pursuant to this chapter, that shall be actuarially reduced to reflect the lump-sum amount paid under subdivision (b). The actuarial reduced unmodified allowance may be modified pursuant to Section 24300.

(d) A member may not apply a lump-sum payment made pursuant to this section for the purposes of redepositing previously refunded retirement contributions pursuant to Chapter 19 (commencing with Section 23200) or purchasing service credit pursuant to Chapter 14 (commencing with Section 22800), Chapter 14.2 (commencing with Section 22820) or Chapter 14.5 (commencing with Section 22850). The

Legislature hereby finds and declares that if a member who elects to receive a partial lump-sum payment also elects to redeposit previously refunded retirement contributions or purchase service credit as a result of the receipt of the lump-sum payment, the Defined Benefit Program may experience a net actuarial impact.

(e) An election pursuant to subdivision (a) may have no net actuarial impact to the Defined Benefit Program. The board shall adopt present value factors to establish a corresponding actuarially reduced monthly allowance, that results in no net actuarial impact to the Defined Benefit Program. The Legislature reserves the right to modify the provisions of this section to further the objective of permitting eligible members to receive a lump-sum distribution of a portion of their benefits, with a corresponding actuarial reduction in their monthly allowance, so that there is no net actuarial impact to the Defined Benefit Program.

SEC. 5. Section 84040.5 of the Education Code is amended to read:

84040.5. (a) The board of governors, in cooperation with, and upon approval by, the Department of Finance, shall prescribe the statements and other information to be included in the audit reports filed with the state and shall develop audit procedures for carrying out the purposes of this section. The Department of Finance may make audits, surveys, and reports which, in the judgment of the department will serve the best interest of the state.

(b) A review of existing audit procedures, statements, and other information required to be included in the audit reports shall be conducted periodically by the board of governors, in cooperation with the Department of Finance. Standards shall be updated periodically.

(c) For the audit of community colleges electing to take formal action pursuant to Sections 22714, 22714.5, 87488, and 87488.1, the audit standards shall require any information as is prescribed by the chancellor, including, but not limited to, the following:

(1) The number and type of positions being vacated.

(2) The age and service credit of the retirees receiving the additional service credit provided by Sections 22714 and 87488.

(3) A comparison of the salary and benefits of each retiree receiving the additional service credit with the salary and benefits of the replacement employee, if any.

(4) The resulting retirement costs, including interest, if any, and postretirement healthcare benefits costs, incurred by the employer.

(d) The chancellor shall annually prepare a cost analysis, based upon the information included in the audit reports for the prior fiscal year, to determine the net savings or costs resulting from formal actions taken by community college districts pursuant to Sections 22714, 22714.5, 87488, and 87488.1, and shall report the results of the cost analysis to the Governor and the Legislature by April 1 of each year.

(e) All costs incurred by the board of governors to implement subdivision (c) shall be absorbed by the board of governors.

(f) At the request of the Department of Finance, each community college district that elects to take formal action pursuant to Sections 22714, 22714.5, 87488, and 87488.1 shall reimburse the Department of Finance for any related administrative costs incurred by the Department of Finance.

SEC. 6. Section 3.5 of this bill incorporates amendments to Section 24216 of the Education Code proposed by both this bill and AB 2554. 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 24216 of the Education Code, and (3) this bill is enacted after AB 2554, in which case Section 3 of this bill shall not become operative.

SEC. 7. The sum of fifty-three thousand dollars ($53,000) is hereby appropriated from the Teachers' Retirement Fund to the Teachers' Retirement Board to implement Section 4 of this act.

CHAPTER 936

An act to amend Section 7280 of, and to add Sections 7283.5 and 7283.51 to, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 2004.]

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

SECTION 1. Section 7280 of the Revenue and Taxation Code is amended to read:

7280. (a) The legislative body of any city, county, or city and county may levy a tax on the privilege of occupying a room or rooms, or other living space, in a hotel, inn, tourist home or house, motel, or other lodging unless the occupancy is for a period of more than 30 days. The tax, when levied by the legislative body of a county, applies only to the unincorporated areas of the county.

(b) For purposes of this section, the term ''the privilege of occupying a room or rooms, or other living space, in a hotel, inn, tourist home or house, motel, or other lodging'' does not include the right of an owner of a time-share estate in a room or rooms in a time-share project, or the owner of a membership camping contract in a camping site at a campground, or the guest of the owner, to occupy the room, rooms, camping site, or other real property in which the owner retains that interest.

For purposes of this subdivision:

(1) ''Time-share estate'' means a time-share estate, as defined by Section 11003.5 of the Business and Professions Code.

(2) ''Membership camping contract'' means a right or license as defined by subdivision (b) of Section 1812.300 of the Civil Code.

(3) ''Guest of that owner'' means a person who does either of the following:

(A) Occupies real property accompanied by the owner of either of the following:

(i) A time-share estate in that real property.

(ii) A camping site in a campground pursuant to a right or license under a membership camping contract.

(B) Exercises that owner's right of occupancy without payment of any compensation to the owner.

(C) ''Guest of that owner'' specifically includes a person occupying a time-share unit or a camping site in a campground pursuant to any form of exchange program.

(c) For purposes of this section, ''other lodging'' includes, but is not limited to, a camping site or a space at a campground or recreational vehicle park, but does not include any of the following:

(1) Any facilities operated by a local government entity.

(2) Any lodging excluded pursuant to subdivision (b).

(3) Any campsite excluded from taxation pursuant to Section 7282.

(d) Subdivision (b) does not affect or apply to the authority of any city, county, or city and county to collect a transient occupancy tax from time-share projects that were in existence as of May 1, 1985, and which time-share projects were then subject to a transient occupancy tax imposed by an ordinance duly enacted prior to May 1, 1985, pursuant to this section. Chapter 257 of the Statutes of 1985 may not be construed to affect any litigation pending on or prior to December 31, 1985.

(e) (1) (A) If the legislative body of a city, county, or city and county elects to exempt from a tax imposed pursuant to this section any of the following persons whose occupancy is for the official business of their employers, the legislative body shall create a standard form to claim this exemption and the officer or employee claiming the exemption shall sign the form under penalty of perjury:

(i) An employee or officer of a government outside the United States.

(ii) An employee or officer of the United States government.

(iii) An employee or officer of the state government or of the government of a political subdivision of the state.

(B) The standard form described in subparagraph (A) shall contain a requirement that the employee or officer claiming the exemption provide to the property owner one of the following, as determined by the legislative body of the city, county, or city and county imposing the tax,

as conclusive evidence that his or her occupancy is for the official business of his or her employer:

(i) Travel orders from his or her government employer.

(ii) A government warrant issued by his or her employer to pay for the occupancy.

(iii) A government credit card issued by his or her employer to pay for the occupancy.

(C) The standard form described in subparagraph (A) shall contain a requirement that the officer or employee provide photo identification, proof of his or her governmental employment as an employee or officer as described in clause (i), (ii), or (iii) of subparagraph (A), and proof, consistent with the provisions of subparagraph (B), that his or her occupancy is for the official business of his or her governmental employer.

(2) There shall be a rebuttable presumption that a property owner is not liable for the tax imposed pursuant to this section with respect to any government employee or officer described in clause (i), (ii), or (iii) of subparagraph (A) of paragraph (1) for whom the property owner retains a signed and dated copy of a standard form that complies with the provisions of subparagraphs (B) and (C) of paragraph (1).

(f) The provisions of subdivision (e) are not intended to preclude a city, county, or city and county from electing to exempt any other class of persons from the tax imposed pursuant to this section.

SEC. 1.5. Section 7280 of the Revenue and Taxation Code is amended to read:

7280. (a) The legislative body of any city, county, or city and county may levy a tax on the privilege of occupying a room or rooms, or other living space, in a hotel, inn, tourist home or house, motel, or other lodging unless the occupancy is for a period of more than 30 days. The tax, when levied by the legislative body of a county, applies only to the unincorporated areas of the county.

(b) For purposes of this section, the term ''the privilege of occupying a room or rooms, or other living space, in a hotel, inn, tourist home or house, motel, or other lodging'' does not include the right of an owner of a time-share estate in a room or rooms in a time-share project, or the owner of a membership camping contract in a camping site at a campground, or the guest of the owner, to occupy the room, rooms, camping site, or other real property in which the owner retains that interest.

For purposes of this subdivision:

(1) ''Time-share estate'' means a time-share estate, as defined by paragraph (1) of subdivision (x) of Section 11212 of the Business and Professions Code.

(2) ''Membership camping contract'' means a right or license as defined by subdivision (b) of Section 1812.300 of the Civil Code.

(3) ''Guest of that owner'' means a person who does either of the following:

(A) Occupies real property accompanied by the owner of either of the following:

(i) A time-share estate in that real property.

(ii) A camping site in a campground pursuant to a right or license under a membership camping contract.

(B) Exercises that owner's right of occupancy without payment of any compensation to the owner.

(C) ''Guest of that owner'' specifically includes a person occupying a time-share unit or a camping site in a campground pursuant to any form of exchange program.

(c) For purposes of this section, ''other lodging'' includes, but is not limited to, a camping site or a space at a campground or recreational vehicle park, but does not include any of the following:

(1) Any facilities operated by a local government entity.

(2) Any lodging excluded pursuant to subdivision (b).

(3) Any campsite excluded from taxation pursuant to Section 7282.

(d) Subdivision (b) does not affect or apply to the authority of any city, county, or city and county to collect a transient occupancy tax from time-share projects that were in existence as of May 1, 1985, and which time-share projects were then subject to a transient occupancy tax imposed by an ordinance duly enacted prior to May 1, 1985, pursuant to this section. Chapter 257 of the Statutes of 1985 may not be construed to affect any litigation pending on or prior to December 31, 1985.

(e) (1) (A) If the legislative body of a city, county, or city and county elects to exempt from a tax imposed pursuant to this section any of the following persons whose occupancy is for the official business of their employers, the legislative body shall create a standard form to claim this exemption and the officer or employee claiming the exemption shall sign the form under penalty of perjury:

(i) An employee or officer of a government outside the United States.

(ii) An employee or officer of the United States government.

(iii) An employee or officer of the state government or of the government of a political subdivision of the state.

(B) The standard form described in subparagraph (A) shall contain a requirement that the employee or officer claiming the exemption provide to the property owner one of the following, as determined by the legislative body of the city, county, or city and county imposing the tax, as conclusive evidence that his or her occupancy is for the official business of his or her employer:

(i) Travel orders from his or her government employer.

(ii) A government warrant issued by his or her employer to pay for the occupancy.

(iii) A government credit card issued by his or her employer to pay for the occupancy.

(C) The standard form described in subparagraph (A) shall contain a requirement that the officer or employee provide photo identification, proof of his or her governmental employment as an employee or officer as described in clause (i), (ii), or (iii) of subparagraph (A), and proof, consistent with the provisions of subparagraph (B), that his or her occupancy is for the official business of his or her governmental employer.

(2) There shall be a rebuttable presumption that a property owner is not liable for the tax imposed pursuant to this section with respect to any government employee or officer described in clause (i), (ii), or (iii) of subparagraph (A) of paragraph (1) for whom the property owner retains a signed and dated copy of a standard form that complies with the provisions of subparagraphs (B) and (C) of paragraph (1).

(f) The provisions of subdivision (e) are not intended to preclude a city, county, or city and county from electing to exempt any other class of persons from the tax imposed pursuant to this section.

SEC. 2. Section 7283.5 is added to the Revenue and Taxation Code, to read:

7283.5. (a) (1) A purchaser, transferee, or other person or entity attempting to obtain ownership of a property, the owner of which is required to collect the tax imposed pursuant to this chapter, may request the city, county, or city and county in which that property is located to issue a tax clearance certificate under this section.

(2) A city, county, or city and county that issues a tax clearance certificate under this section may charge an administrative fee to cover its costs in issuing the certificate.

(b) Within 90 days of receiving a request described in subdivision (a), a city, county, or city and county shall do either of the following:

(1) Issue the tax clearance certificate.

(2) (A) Request the current owner of the property to make available that owner's transient occupancy tax records for the purpose of conducting an audit regarding transient occupancy taxes that may be due and owing from the owner of the property.

(B) (i) Complete the audit described in subparagraph (A) on or before 90 days after the date that the current or former owner's records are made available to the auditing jurisdiction and issue a tax clearance certificate within 30 days of completing the audit.

(ii) If, after completing the audit, the city, county, or city and county makes a determination that the current owner's records are insufficient to make a determination of whether transient occupancy taxes may be

due and owing, the city, county, or city and county is not required to issue a tax clearance certificate as otherwise required by this subdivision. The city, county, or city and county shall, within 30 days of making that determination, notify the purchaser, transferee, or other person or entity that made the request that it will not issue a tax clearance certificate due to the insufficiency of the prior owner's records.

(c) If a city, county, or city and county does not comply with subdivision (b), the purchaser, transferee, or other person or entity that obtains ownership of the property shall not be liable for any transient occupancy tax obligations incurred prior to the purchase or transfer of the property.

(d) For a tax clearance certificate issued under this section, all of the following apply:

(1) The certificate shall state the amount of tax due and owing for the subject property, if any.

(2) The certificate shall state the period of time for which it is valid.

(3) The purchaser, transferee, or other person or entity who obtains ownership of the property may rely upon the tax clearance certificate as conclusive evidence of the tax liability associated with the property as of the date specified on the certificate.

(e) Any purchaser, transferee, or other person or entity described in subdivision (a) who does not obtain a tax clearance certificate under this section, or who obtains a tax clearance certificate that indicates that tax is due and fails to withhold, for the benefit of the city, county, or city and county, sufficient funds in the escrow account for the purchase of the property to satisfy the transient occupancy tax liability, shall be held liable for the amount of tax due and owing on the property.

(f) This section may not be construed to relieve a property owner of transient occupancy tax obligations incurred when that owner owned the property.

SEC. 3. Section 7283.51 is added to the Revenue and Taxation Code, to read:

7283.51. Notwithstanding any other provision of law, except in the case of fraud or the failure of a property owner to file a transient occupancy tax return, a city, county, or city and county may institute an action to collect unpaid transient occupancy taxes within four years of the date on which the transient occupancy taxes were required to be paid.

SEC. 4. It is the intent of the Legislature that this bill not be construed to make any changes to transient occupancy tax laws that apply to charter cities and charter counties.

SEC. 5. Section 1.5 of this bill incorporates amendments to Section 7280 of the Revenue and Taxation Code proposed by both this bill and AB 2252. 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 7280 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 2252, in which case Section 1 of this bill shall not become operative.

CHAPTER 937

An act to amend Sections 6252 and 6254 of the Government Code, relating to public records.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 2004.]

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

SECTION 1. Section 6252 of the Government Code is amended to read:

6252. As used in this chapter:

(a) ''Local agency'' includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; other local public agency; or entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Section 54952.

(b) ''Member of the public'' means any person, except a member, agent, officer, or employee of a federal, state, or local agency acting within the scope of his or her membership, agency, office, or employment.

(c) ''Person'' includes any natural person, corporation, partnership, limited liability company, firm, or association.

(d) ''Public agency'' means any state or local agency.

(e) ''Public records'' includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. ''Public records'' in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975.

(f) ''State agency'' means every state office, officer, department, division, bureau, board, and commission or other state body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.

(g) ''Writing'' means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters,

words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

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 may not be used directly or indirectly, or furnished to another, 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. Nothing in this paragraph shall be construed to prohibit or limit a scholarly, journalistic, political, or governmental use of address information obtained pursuant to this paragraph.

(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. 2.5. 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 may not be used directly or indirectly, or furnished to another, 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. Nothing in this paragraph shall be construed to prohibit or limit a scholarly, journalistic, political, or government use of address information obtained pursuant to this paragraph.

(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 that 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).

(cc) All information provided to the Secretary of State by a person for the purpose of registration in the Advance Health Care Directive Registry, except that those records shall be released at the request of a health care provider, a public guardian, or the registrant's legal representative.

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 2.5 of this bill incorporates amendments to Section 6254 of the Government Code proposed by both this bill and AB 2445. 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 6254 of the Government Code, and (3) this bill is enacted after AB 2445, in which case Section 2 of this bill shall not become operative.

CHAPTER 938

An act to add and repeal Section 8546.9 of the Government Code, relating to the State Auditor.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 2004.]

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

SECTION 1. Section 8546.9 is added to the Government Code, to read:

8546.9. (a) The State Auditor shall conduct an audit of the state's procurement and reimbursement practices as they relate to the purchase of drugs for or by state agencies, including, but not limited to, the State Department of Mental Health, the Department of Corrections, the Department of the Youth Authority, the State Department of Developmental Services, the Public Employees' Retirement System, and the State Department of Health Services.

(b) The State Auditor shall issue and provide the audit report to the Legislature no later than May 31, 2005. The State Auditor shall provide to the Chairs of the Assembly Health Committee, the Assembly Budget Committee, the Senate Health and Human Services Committee, the Senate Budget and Fiscal Review Committee, and the Joint Legislative Audit Committee the State Auditor's analysis of the auditee's one-year status report on the auditee's implementation of the recommendations contained in the audit report. It is the intent of the Legislature, if the results of the status report warrant further inquiry, that the Joint Legislative Audit Committee direct the State Auditor to conduct additional audit work, as described in this section, and to issue an additional audit report by June 2007. If circumstances continue to warrant additional work, it is the intent of the Legislature that the Joint Legislative Audit Committee direct the State Auditor to issue a third audit report by June 2009.

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

(1) A review of a representative sample of the state's procurement and reimbursement of drugs for the period examined to determine whether the state is receiving the best value for the drugs it purchases.

(2) To the extent possible, a comparison of drug costs to the state with drug costs to other appropriate entities such as the federal government, the Canadian government, and private payers.

(3) A determination of whether the state's procurement and reimbursement practices result in savings from strategies such as negotiated discounts, rebates, and contracts with multistate purchasing organizations, and whether the strategies selected by the state result in the lowest possible costs.

(d) In preparing the audit report, as in the case of any other audit, the Bureau of State Audits is subject to Section 8545.1 of the Government Code.

(e) 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.

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CHAPTER 939

An act to amend Section 1916.5 of the Civil Code, and to amend Section 677 of the Insurance Code, relating to financial transactions.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 2004.]

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

SECTION 1. Section 1916.5 of the Civil Code is amended to read:

1916.5. (a) No increase in interest provided for in any provision for a variable interest rate contained in a security document, or evidence of debt issued in connection therewith, by a lender other than a supervised financial organization is valid unless that provision is set forth in the security document, and in any evidence of debt issued in connection therewith, and the document or documents contain the following provisions:

(1) A requirement that when an increase in the interest rate is required or permitted by a movement in a particular direction of a prescribed standard an identical decrease is required in the interest rate by a movement in the opposite direction of the prescribed standard.

(2) The rate of interest shall not change more often than once during any semiannual period, and at least six months shall elapse between any two changes.

(3) The change in the interest rate shall not exceed one-fourth of 1 percent in any semiannual period, and shall not result in a rate more than 2.5 percentage points greater than the rate for the first loan payment due after the closing of the loan.

(4) The rate of interest shall not change during the first semiannual period.

(5) The borrower is permitted to prepay the loan in whole or in part without a prepayment charge within 90 days of notification of any increase in the rate of interest.

(6) A statement attached to the security document and to any evidence of debt issued in connection therewith printed or written in a size equal to at least 10-point bold type, consisting of the following language:

NOTICE TO BORROWER: THIS DOCUMENT CONTAINS PROVISIONS FOR A VARIABLE INTEREST RATE.

(b) (1) This section shall be applicable only to a mortgage contract, deed of trust, real estate sales contract, or any note or negotiable instrument issued in connection therewith, when its purpose is to finance the purchase or construction of real property containing four or fewer residential units or on which four or fewer residential units are to be constructed.

(2) This section does not apply to unamortized construction loans with an original term of two years or less or to loans made for the purpose of the purchase or construction of improvements to existing residential dwellings.

(c) Regulations setting forth the prescribed standard upon which variations in the interest rate shall be based may be adopted by the Commissioner of Financial Institutions with respect to savings associations and by the Insurance Commissioner with respect to insurers. Regulations adopted by the Commissioner of Financial Institutions shall apply to all loans made by savings associations pursuant to this section prior to January 1, 1990.

(d) As used in this section:

(1) ''Supervised financial organization'' means a state or federally regulated bank, savings association, savings bank, or credit union, or state regulated industrial loan company, a licensed finance lender under the California Finance Lenders Law, a licensed residential mortgage lender under the California Residential Mortgage Lending Act, or holding company, affiliate, or subsidiary thereof, or institution of the Farm Credit System, as specified in 12 U.S.C. Sec. 2002.

(2) ''Insurer'' includes, but is not limited to, a nonadmitted insurance company.

(3) ''Semiannual period'' means each of the successive periods of six calendar months commencing with the first day of the calendar month in which the instrument creating the obligation is dated.

(4) ''Security document'' means a mortgage contract, deed of trust, or real estate sales contract.

(5) ''Evidence of debt'' means a note or negotiable instrument.

(e) This section shall be applicable only to instruments executed on and after the effective date of this section.

(f) This section does not apply to nonprofit public corporations.

(g) This section is not intended to apply to a loan made where the rate of interest provided for is less than the then current market rate for a similar loan in order to accommodate the borrower because of a special relationship, including, but not limited to, an employment or business relationship, of the borrower with the lender or with a customer of the lender and the sole increase in interest provided for with respect to the loan will result only by reason of the termination of that relationship or upon the sale, deed, or transfer of the property securing the loan to a person not having that relationship.

SEC. 2. Section 677 of the Insurance Code is amended to read:

677. (a) All notices of cancellation shall be in writing, mailed to the named insured at the address shown in the policy, or to his or her last known address, and shall state, with respect to policies in effect after the time limits specified in Section 676, (1) which of the grounds set forth

in Section 676 is relied upon, and (2) that, upon written request of the named insured, mailed or delivered to the insurer within 15 days of the date of cancellation, the insurer shall specify the reason for the cancellation except where the reason is for nonpayment of premium and is so stated in the cancellation notice.

(b) For purposes of this section, a lienholder's copy of those notices shall be deemed mailed if, with the lienholder's consent, it is delivered by electronic transmittal, facsimile, or personal delivery.

CHAPTER 940

An act to amend Section 10176 of, and to add Section 10131.8 to, the Business and Professions Code, to amend Section 1916.5 of the Civil Code, to add Section 22317.5 to the Financial Code, and to amend Section 677 of the Insurance Code, relating to lending.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 2004.]

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

SECTION 1. Section 10131.8 is added to the Business and Professions Code, to read:

10131.8. (a) A real estate broker who acts pursuant to subdivision (d) of Section 10131 and who meets all of the following requirements shall notify the department annually in writing on a form that is acceptable to the commissioner:

(1) The real estate broker is an approved lender for the Federal Housing Administration, Veterans Administration, Farmers Home Administration, Government National Mortgage Association, Federal National Mortgage Administration, or the Federal Home Loan Mortgage Corporation.

(2) The real estate broker makes residential mortgage loans to a loan applicant for a residential mortgage loan by using or advancing the broker's own funds, or by making a commitment to advance the broker's own funds.

(3) The real estate broker makes the credit decision in the loan transaction.

(4) The real estate broker at all times maintains a tangible net worth, computed in accordance with generally accepted accounting standards, of a minimum of two hundred fifty thousand dollars ($250,000).

(b) As used in paragraph (2) of subdivision (a), ''own funds'' means (1) cash, corporate capital, or warehouse credit lines at commercial

banks, savings banks, savings and loan associations, industrial loan companies, or other sources that are liability items on the real estate broker's financial statements, whether secured or unsecured, or (2) cash, corporate capital, or warehouse credit lines at commercial banks, savings banks, savings and loan associations, industrial loan companies, or other sources that are liability items on the financial statements of an affiliate of the real estate broker, whether secured or unsecured. ''Own funds'' does not include funds provided by a third party to fund a loan on condition that the third party will subsequently purchase or accept an assignment of the loan.

SEC. 2. Section 10176 of the Business and Professions Code is amended to read:

10176. The commissioner may, upon his or her own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of any person engaged in the business or acting in the capacity of a real estate licensee within this state, and he or she may temporarily suspend or permanently revoke a real estate license at any time where the licensee, while a real estate licensee, in performing or attempting to perform any of the acts within the scope of this chapter has been guilty of any of the following:

(a) Making any substantial misrepresentation.

(b) Making any false promises of a character likely to influence, persuade or induce.

(c) A continued and flagrant course of misrepresentation or making of false promises through real estate agents or salespersons.

(d) Acting for more than one party in a transaction without the knowledge or consent of all parties thereto.

(e) Commingling with his or her own money or property the money or other property of others which is received and held by him or her.

(f) Claiming, demanding, or receiving a fee, compensation or commission under any exclusive agreement authorizing or employing a licensee to perform any acts set forth in Section 10131 for compensation or commission where the agreement does not contain a definite, specified date of final and complete termination.

(g) The claiming or taking by a licensee of any secret or undisclosed amount of compensation, commission or profit or the failure of a licensee to reveal to the employer of the licensee the full amount of the licensee's compensation, commission or profit under any agreement authorizing or employing the licensee to do any acts for which a license is required under this chapter for compensation or commission prior to or coincident with the signing of an agreement evidencing the meeting of the minds of the contracting parties, regardless of the form of the agreement, whether evidenced by documents in an escrow or by any other or different procedure.

(h) The use by a licensee of any provision allowing the licensee an option to purchase in an agreement authorizing or employing the licensee to sell, buy, or exchange real estate or a business opportunity for compensation or commission, except when the licensee prior to or coincident with election to exercise the option to purchase reveals in writing to the employer the full amount of licensee's profit and obtains the written consent of the employer approving the amount of the profit.

(i) Any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

(j) Obtaining the signature of a prospective purchaser to an agreement which provides that the prospective purchaser shall either transact the purchasing, leasing, renting or exchanging of a business opportunity property through the broker obtaining the signature, or pay a compensation to the broker if the property is purchased, leased, rented or exchanged without the broker first having obtained the written authorization of the owner of the property concerned to offer the property for sale, lease, exchange or rent.

(k) Failing to disburse funds in accordance with a commitment to make a mortgage loan that is accepted by the applicant when the real estate broker represents to the applicant that the broker is either of the following:

(1) The lender.

(2) Authorized to issue the commitment on behalf of the lender or lenders in the mortgage loan transaction.

(*l*) Intentionally delaying the closing of a mortgage loan for the sole purpose of increasing interest, costs, fees, or charges payable by the borrower.

SEC. 3. Section 1916.5 of the Civil Code is amended to read:

1916.5. (a) No increase in interest provided for in any provision for a variable interest rate contained in a security document, or evidence of debt issued in connection therewith, by a lender other than a supervised financial organization is valid unless that provision is set forth in the security document, and in any evidence of debt issued in connection therewith, and the document or documents contain the following provisions:

(1) A requirement that when an increase in the interest rate is required or permitted by a movement in a particular direction of a prescribed standard an identical decrease is required in the interest rate by a movement in the opposite direction of the prescribed standard.

(2) The rate of interest shall not change more often than once during any semiannual period, and at least six months shall elapse between any two changes.

(3) The change in the interest rate shall not exceed one-fourth of 1 percent in any semiannual period, and shall not result in a rate more than 2.5 percentage points greater than the rate for the first loan payment due after the closing of the loan.

(4) The rate of interest shall not change during the first semiannual period.

(5) The borrower is permitted to prepay the loan in whole or in part without a prepayment charge within 90 days of notification of any increase in the rate of interest.

(6) A statement attached to the security document and to any evidence of debt issued in connection therewith printed or written in a size equal to at least 10-point boldface type, consisting of the following language:

NOTICE TO BORROWER: THIS DOCUMENT CONTAINS PROVISIONS FOR A VARIABLE INTEREST RATE.

(b) (1) This section shall be applicable only to a mortgage contract, deed of trust, real estate sales contract, or any note or negotiable instrument issued in connection therewith, when its purpose is to finance the purchase or construction of real property containing four or fewer residential units or on which four or fewer residential units are to be constructed.

(2) This section does not apply to unamortized construction loans with an original term of two years or less or to loans made for the purpose of the purchase or construction of improvements to existing residential dwellings.

(c) Regulations setting forth the prescribed standard upon which variations in the interest rate shall be based may be adopted by the Commissioner of Financial Institutions with respect to savings associations and by the Insurance Commissioner with respect to insurers. Regulations adopted by the Commissioner of Financial Institutions shall apply to all loans made by savings associations pursuant to this section prior to January 1, 1990.

(d) As used in this section:

(1) ''Supervised financial organization'' means a state or federally regulated bank, savings association, savings bank, or credit union, or state regulated industrial loan company, a licensed finance lender under the California Finance Lenders Law, a licensed residential mortgage lender under the California Residential Mortgage Lending Act, or holding company, affiliate, or subsidiary thereof, or institution of the Farm Credit System, as specified in 12 U.S.C. Sec. 2002.

(2) ''Insurer'' includes, but is not limited to, a nonadmitted insurance company.

(3) ''Semiannual period'' means each of the successive periods of six calendar months commencing with the first day of the calendar month in which the instrument creating the obligation is dated.

(4) ''Security document'' means a mortgage contract, deed of trust, or real estate sales contract.

(5) ''Evidence of debt'' means a note or negotiable instrument.

(e) This section is applicable only to instruments executed on and after the effective date of this section.

(f) This section does not apply to nonprofit public corporations.

(g) This section is not intended to apply to a loan made where the rate of interest provided for is less than the then current market rate for a similar loan in order to accommodate the borrower because of a special relationship, including, but not limited to, an employment or business relationship, of the borrower with the lender or with a customer of the lender and the sole increase in interest provided for with respect to the loan will result only by reason of the termination of that relationship or upon the sale, deed, or transfer of the property securing the loan to a person not having that relationship.

SEC. 4. Section 22317.5 is added to the Financial Code, to read:

22317.5. On any loan secured by real property, a licensee may not do either of the following:

(a) Fail to disburse funds in accordance with a commitment to make a loan that is accepted by the applicant.

(b) Intentionally delay the closing of a loan for the sole purpose of increasing interest, costs, fees, or charges payable by the borrower.

SEC. 5. Section 677 of the Insurance Code is amended to read:

677. (a) All notices of cancellation shall be in writing, mailed to the named insured at the address shown in the policy, or to his or her last known address, and shall state, with respect to policies in effect after the time limits specified in Section 676, (1) which of the grounds set forth in Section 676 is relied upon, and (2) that, upon written request of the named insured, mailed or delivered to the insurer within 15 days of the date of cancellation, the insurer shall specify the reason for the cancellation except where the reason is for nonpayment of premium and is so stated in the cancellation notice.

(b) For purposes of this section, a lienholder's copy of those notices shall be deemed mailed if, with the lienholder's consent, it is delivered by electronic transmittal, facsimile, or personal delivery.

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 941

An act to add Chapter 4.9 (commencing with Section 2196) to Division 3 of the Streets and Highways Code, relating to transportation.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 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) California's maritime ports play an integral role in the state's economy, providing the focal point for importation of foreign goods and exportation of California goods.

(b) California consumers and businesses rely heavily on the maritime industry and the ports to transport goods for use throughout the state.

(c) In 2000, 248 billion imports entered the United States through California's ports. With more than three hundred fifty billion dollars ($350,000,000,000) in international commerce, California's economy depends on trade. More than one in seven California jobs is tied to trade.

(d) Consumer demand for goods is essential to growth of the California economy, however, the increase in cargo movement resulting from increased commerce and a growing economy poses significant challenges.

(e) The increasing amount of cargo movement through the ports has created traffic congestion and higher emissions levels during peak commuter traffic hours. This congestion and air pollution is a result of the current system that encourages traffic to move during peak hours.

(f) The transportation network must be modernized to encourage the flow of goods during off-peak hours and to thereby also reduce air emissions. Modernization of the transportation network cannot be accomplished incrementally, as all parts of the network must work together to redirect traffic.

(g) Off-peak use of the transportation network must be supported by all sectors of the transportation industry.

(h) The transportation industry must employ comprehensive, strict security mechanisms that ensure the safety of communities in the vicinity of the ports and that protect valuable cargo.

(i) It would be appropriate to create an intermodal transportation system that encourages all participants to utilize transportation facilities

during off-peak hours in order to streamline the movement of cargo from the ports to distribution centers and to prevent an increase in environmental concerns in the vicinity of the ports.

(j) It would be appropriate to develop structural improvements to the intermodal system that would enable movement of increased volumes of cargo through operational efficiencies, greater utilization of alternative transportation systems, and the introduction of new technologies.

SEC. 2. Chapter 4.9 (commencing with Section 2196) is added to Division 3 of the Streets and Highways Code, to read:

CHAPTER 4.9. PORT-RELATED CARGO

2196. The Port of Los Angeles and the Port of Long Beach shall evaluate changes to the goods movement network to gauge adherence by those ports to the state goals in subdivisions (i) and (j) of Section 1 of the statute enacting this chapter and shall collect statistics on the operation of the two ports regarding compliance with federal, state, and local efforts to achieve all of the following:

(a) Utilization of off-peak hours at port terminals. For the purposes of this section, ''off-peak hours'' means Monday through Friday between the hours of 6 p.m. and 3 a.m., and all day on Saturdays and Sundays.

(b) Utilization of distribution centers during off-peak hours.

(c) Utilization of rail facilities.

(d) Appointments made at port terminals during peak and off-peak hours through the appointment system as described in Chapter 1129 of the Statutes of 2002.

(e) Appointments honored at port terminals during peak and off-peak hours.

2196.1. The Port of Los Angeles and the Port of Long Beach shall provide the statistical data obtained pursuant to Section 2196 to the Business, Transportation and Housing Agency, the Office of Goods Movement of the Department of Transportation, and the Assembly and Senate Committees on Transportation. That information shall be provided on or before January 31, 2005, and annually thereafter through 2007.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one

million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 942

An act to add Section 1760 to the Harbors and Navigation Code, relating to ports.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 2004.]

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

SECTION 1. Section 1760 is added to the Harbors and Navigation Code, to read:

1760. (a) For purposes of this section, ''council'' means the California Marine and Intermodal Transportation System Advisory Council, a regional subunit of the Marine Transportation System National Advisory Council chartered by the federal Secretary of Transportation under the Federal Advisory Council Act (P.L. 92-463).

(b) The council is requested to do all of the following:

(1) Meet, hold public hearings, and compile data on issues that include, but need not be limited to, all of the following:

(A) The projected growth of each maritime port in the state.

(B) The costs and benefits of developing a coordinated state program to obtain federal funding for maritime port growth, security, and congestion relief.

(C) Impacts of maritime port growth on the state's transportation system.

(D) Air pollution caused by movement of goods through the state's maritime ports, and proposed methods of mitigating or alleviating that pollution.

(E) Maritime port security, including, but not limited to, training, readiness, certification of port personnel, exercise planning and conduct, and critical marine transportation system infrastructure protection.

(F) A statewide plan for continuing operation of maritime ports in cooperation with the United States Coast Guard, the federal Department of Homeland Security, the Office of Emergency Services, the state Office of Homeland Security, and the California National Guard, consistent with the state's emergency management system and the national emergency management system, in the event of a major incident or disruption of port operations in one or more of the state's maritime ports.

(G) State marine transportation policy, legislation, and planning; regional infrastructure project funding; competitiveness; environmental impacts; port safety and security; and any other matters affecting the marine transportation system of the United States within, or affecting, the state.

(2) Identify all state agencies that are involved with the development, planning, or coordination of maritime ports in the state.

(3) Identify other states that have a statewide port master plan and determine whether that plan has assisted those states in improving their maritime ports.

(4) Compile all information obtained pursuant to paragraphs (1) to (3), inclusive, and submit its findings in a report to the Legislature not later than January 1, 2006. The report should include, but need not be limited to, recommendations on methods to better manage the growth of maritime ports and address the environmental impacts of moving goods through those ports.

(c) The activities of the council pursuant to this section shall not be funded with appropriations from the General Fund.

CHAPTER 943

An act to add Sections 1259.2 and 1259.4 to the Water Code, relating to water.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 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) In 1997, the State Water Resources Control Board prepared a staff report that broadly analyzed water right permit matters relating to the Russian River basin.

(b) From 1997 to 2002, the board, the Department of Fish and Game, the National Marine Fisheries Service, and Trout Unlimited debated the necessary flow requirements, and other biological and fish-related conditions that are appropriate for inclusion in water right permits.

(c) In June 2002, state and federal fish agencies released their updated ''Guidelines for Maintaining Instream Flows to Protect Fisheries Resources Downstream of Water Diversions in Mid-California Coastal Streams.'' These joint guidelines represent the first time state and federal fish agencies presented to the board specific fish measures in guideline format that are the minimum necessary conditions to preserve a level of

stream flow that ensures that anadromous salmonids will not be adversely impacted by diversions.

(d) The board has not formally adopted the management objectives set forth in those joint guidelines, even though the adoption would significantly advance the effort to ensure that appropriate fish measures are included in new water right permits and that cumulative impacts are considered.

(e) The adoption of these joint guidelines is necessary for the protection of fishery resources even if these guidelines are required to be amended from time to time.

(f) Pending before the board are more than 276 applications to appropriate water from streams in the Counties of Marin, Napa, Sonoma, Mendocino, and Humboldt.

(g) Many of these applications have been pending for a decade. Most of these applications have been pending for at least five years. These delays are inappropriate, and they produce regulatory uncertainty for the water user community and the conservation and fishing communities. All interested stakeholders would benefit if information was available with regard to these applications to appropriate water, including, but not limited to, the number of pending applications, the proposed source of water for each application, and the status of each application.

SEC. 2. Section 1259.2 is added to the Water Code, to read:

1259.2. (a) The board shall annually prepare a written summary, in chart form, of pending applications to appropriate water in the Counties of Marin, Napa, Sonoma, Mendocino, and Humboldt. The summary shall include a description of the status of each pending application, the actions taken in the preceding year, proposed actions for the upcoming year, and the proposed date for final action with regard to that application.

(b) For the purposes of carrying out subdivision (a), the board may post the information described in subdivision (a) on its Web site.

SEC. 3. Section 1259.4 is added to the Water Code, to read:

1259.4. (a) (1) On or before January 1, 2007, the board shall adopt principles and guidelines for maintaining instream flows in coastal streams from the Mattole River to San Francisco and in coastal streams entering northern San Pablo Bay, in accordance with state policy for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7, for the purposes of water right administration.

(2) The board may adopt principles and guidelines for maintaining instream flows not described in paragraph (1), in accordance with state policy for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7, for the purposes of water right administration.

(b) Prior to the adoption of principles and guidelines pursuant to subdivision (a), the board may consider the 2002 ''Guidelines for Maintaining Instream Flows to Protect Fisheries Resources Downstream of Water Diversions in Mid-California Coastal Streams'' for the purposes of water right administration.

CHAPTER 944

An act to amend Sections 3361, 3362, 3691, 3691.2, 3791, 3791.3, 3792, and 4217 of the Revenue and Taxation Code, relating to property taxation.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 2004.]

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

SECTION 1. Section 3361 of the Revenue and Taxation Code is amended to read:

3361. Annually, on or before June 8th, the tax collector shall publish a notice of power and intent to sell all property that will be tax defaulted for five years or more, or three years or more in the case of nonresidential commercial property, as defined in Section 3691, in an applicable county, on the date specified.

SEC. 1.5. Section 3361 of the Revenue and Taxation Code is amended to read:

3361. Annually, on or before June 8th, the tax collector shall publish a notice of power and intent to sell all property that will be tax defaulted for one of the following:

(a) Five years or more on the date specified.

(b) Three or more years on the date specified in the case of residential real property that could serve the public benefit by providing housing or services directly related to low-income persons, for which a request has been made by a city, county, city and county, or nonprofit organization, pursuant to Section 3692.4, to offer that property at the next scheduled public auction.

(c) Three years or more in the case of nonresidential commercial property, as defined in Section 3691, in an applicable county, on the date specified.

SEC. 2. Section 3362 of the Revenue and Taxation Code is amended to read:

3362. The published notice shall show:

(a) The date of the notice.

(b) That on July 1, five years or more, or three years or more in the case of nonresidential commercial property, as defined in Section 3691, in an applicable county, will have elapsed since the property became tax defaulted.

(c) That, unless sooner redeemed or an installment plan of redemption is initiated, the property will be sold.

(d) That the power to sell for nonpayment of taxes arises if the property remains tax defaulted at 12:01 a.m. on July 1.

(e) That if the property is sold for nonpayment of taxes the right of redemption will terminate.

(f) The official who will furnish all information concerning redemption.

(g) The fiscal year for which the defaulted taxes were levied.

(h) A description of the property. The assessments contained in this notice shall be numbered in ascending numerical order.

(i) The amount of taxes originally declared in default opposite the description of the property.

(j) The name of the assessee on the current roll.

(k) The street address of the property, if any, shown on the county assessment records.

SEC. 2.5. Section 3362 of the Revenue and Taxation Code is amended to read:

3362. The published notice shall show:

(a) The date of the notice.

(b) (1) That on July 1, five years or more will have elapsed since the property became tax defaulted; or

(2) That, on July 1, three years or more in the case of nonresidential commercial property, as defined in Section 3691, in an applicable county will have elapsed since the property became tax defaulted; or

(3) That, on July 1, in the case of real property that could serve the public benefit by providing housing or services directly related to low-income persons, three years or more have elapsed, and a request has been made by a city, county, city and county, or nonprofit organization, pursuant to Section 3692.4, to offer that property at the next scheduled public auction.

(c) That, unless sooner redeemed or an installment plan of redemption is initiated, the property will be sold.

(d) That the power to sell for nonpayment of taxes arises if the property remains tax defaulted at 12:01 a.m. on July 1.

(e) That if the property is sold for nonpayment of taxes the right of redemption will terminate.

(f) The official who will furnish all information concerning redemption.

(g) The fiscal year for which the defaulted taxes were levied.

(h) A description of the property. The assessments contained in this notice shall be numbered in ascending numerical order.

(i) The amount of taxes originally declared in default opposite the description of the property.

(j) The name of the assessee on the current roll.

(k) The street address of the property, if any, shown on the county assessment records.

SEC. 3. Section 3691 of the Revenue and Taxation Code is amended to read:

3691. (a) (1) (A) Five years or more, or three years or more in the case of nonresidential commercial property, after the property has become tax defaulted, the tax collector shall have the power to sell and shall attempt to sell in accordance with Section 3692 all or any portion of tax-defaulted property that has not been redeemed, without regard to the boundaries of the parcels, as provided in this chapter, unless by other provisions of law the property is not subject to sale. Any person, regardless of any prior or existing lien on, claim to, or interest in, the property, may purchase at the sale. In the case of tax-defaulted property that has been damaged by a disaster in an area declared to be a disaster area by local, state, or federal officials and whose damage has not been substantially repaired, the five-year period set forth in this subdivision shall be tolled until five years have elapsed from the date the damage to the property was incurred.

(B) A county may elect, by an ordinance or resolution adopted by a majority vote of its entire governing body, to have the five-year time period described in subparagraph (A) apply to tax-defaulted nonresidential commercial property.

(C) For purposes of this subdivision, ''nonresidential commercial property'' means all property except the following:

(i) A constructed single-family or multifamily unit that is intended to be used primarily as a permanent residence, is used primarily as a permanent residence, or that is zoned as a residence, and the land on which that unit is constructed.

(ii) Real property that is used and zoned for producing commercial agricultural commodities.

(2) When a part of a tax-defaulted parcel is sold, the balance continues subject to redemption and shall be separately valued for the purpose of redemption in the manner provided by Chapter 2 (commencing with Section 4131) of Part 7.

(3) The tax collector shall provide notice of an intended sale under this subdivision in the manner prescribed by Sections 3704 and 3704.5 and any other applicable statute. If the intended sale is of nonresidential commercial property that has been tax-defaulted for fewer than five years, all of the following apply:

(A) On or before the notice date, the tax collector shall also mail, in the manner specified in paragraph (1) of subdivision (c) of Section 2924b of the Civil Code, notice containing any information contained in the publication required under Sections 3704 and 3704.5 to, as applicable, all of the following:

(i) The parties specified in paragraph (2) of subdivision (c) of Section 2924b of the Civil Code.

(ii) Each taxing agency specified in paragraph (3) of subdivision (c) of Section 2924b of the Civil Code.

(iii) Any beneficiary of a deed of trust or a mortgagee of any mortgage recorded against the nonresidential commercial property, and any assignee or vendee of these beneficiaries or mortgagees.

(B) For purposes of this paragraph:

(i) ''Notice date'' means a date at least 90 days before an intended sale or at least 90 days before the date upon which the property may be sold.

(ii) ''Recording date of the notice of default'' as used in subdivision (c) of Section 2924b of the Civil Code means a date that is 30 days before the notice date.

(iii) ''Deed of trust or mortgage being foreclosed'' as used in subdivision (c) of Section 2924b of the Civil Code means the defaulted tax lien.

(b) (1) (A) Three years or more after the property has become tax defaulted and subject to a nuisance abatement lien, the tax collector shall have the power to sell and may sell all or any portion of tax-defaulted property that has not been redeemed, without regard to the boundaries of parcels, as provided in this chapter, unless by other provisions of law the property is not subject to sale. Any person, regardless of any prior or existing lien on, claim to, or interest in, the property, may purchase at the sale.

(B) When a part of a tax-defaulted parcel is sold, the balance continues subject to redemption and shall be separately valued for the purpose of redemption in the manner provided by Chapter 2 (commencing with Section 4131) of Part 7.

(2) Before the tax collector sells vacant residential developed property pursuant to this subdivision, actual notice, by certified mail, shall be provided to the property owner, if the property owner's identity can be determined from the county assessor's or county recorder's records. The tax collector's power of sale shall not be affected by the failure of the property owner to receive notice.

(3) Before the tax collector sells vacant residential developed property pursuant to this subdivision, notice of the sale shall be given in the manner specified by Section 3704.7.

(c) The amendments made to this section by the act adding this subdivision apply to property that becomes tax defaulted on or after January 1, 2005.

SEC. 3.5. Section 3691 of the Revenue and Taxation Code is amended to read:

3691. (a) (1) (A) Five years or more, or three years or more in the case of nonresidential commercial property, after the property has become tax defaulted, the tax collector shall have the power to sell and shall attempt to sell in accordance with Section 3692 all or any portion of tax-defaulted property that has not been redeemed, without regard to the boundaries of the parcels, as provided in this chapter, unless by other provisions of law the property is not subject to sale. Any person, regardless of any prior or existing lien on, claim to, or interest in, the property, may purchase at the sale. In the case of tax-defaulted property that has been damaged by a disaster in an area declared to be a disaster area by local, state, or federal officials and whose damage has not been substantially repaired, the five-year period set forth in this subdivision shall be tolled until five years have elapsed from the date the damage to the property was incurred.

(B) A county may elect, by an ordinance or resolution adopted by a majority vote of its entire governing body, to have the five-year time period described in subparagraph (A) apply to tax-defaulted nonresidential commercial property.

(C) For purposes of this subdivision, ''nonresidential commercial property'' means all property except the following:

(i) A constructed single-family or multifamily unit that is intended to be used primarily as a permanent residence, is used primarily as a permanent residence, or that is zoned as a residence, and the land on which that unit is constructed.

(ii) Real property that is used and zoned for producing commercial agricultural commodities.

(2) When a part of a tax-defaulted parcel is sold, the balance continues subject to redemption and shall be separately valued for the purpose of redemption in the manner provided by Chapter 2 (commencing with Section 4131) of Part 7.

(3) The tax collector shall provide notice of an intended sale under this subdivision in the manner prescribed by Sections 3704 and 3704.5 and any other applicable statute. If the intended sale is of nonresidential commercial property that has been tax-defaulted for fewer than five years, all of the following apply:

(A) On or before the notice date, the tax collector shall also mail, in the manner specified in paragraph (1) of subdivision (c) of Section 2924b of the Civil Code, notice containing any information contained

in the publication required under Sections 3704 and 3704.5 to, as applicable, all of the following:

(i) The parties specified in paragraph (2) of subdivision (c) of Section 2924b of the Civil Code.

(ii) Each taxing agency specified in paragraph (3) of subdivision (c) of Section 2924b of the Civil Code.

(iii) Any beneficiary of a deed of trust or a mortgagee of any mortgage recorded against the nonresidential commercial property, and any assignee or vendee of these beneficiaries or mortgagees.

(B) For purposes of this paragraph:

(i) ''Notice date'' means a date at least 90 days before an intended sale or at least 90 days before the date upon which the property may be sold.

(ii) ''Recording date of the notice of default'' as used in subdivision (c) of Section 2924b of the Civil Code means a date that is 30 days before the notice date.

(iii) ''Deed of trust or mortgage being foreclosed'' as used in subdivision (c) of Section 2924b of the Civil Code means the defaulted tax lien.

(b) (1) (A) Three years or more after the property has become tax defaulted and subject to a nuisance abatement lien or a request has been made by a city, county, city and county, or nonprofit organization, pursuant to Section 3692.4, to offer that property at the next scheduled public auction, the tax collector shall have the power to sell and may sell all or any portion of tax-defaulted property that has not been redeemed, without regard to the boundaries of parcels, as provided in this chapter, unless by other provisions of law the property is not subject to sale. Any person, regardless of any prior or existing lien on, claim to, or interest in, the property, may purchase at the sale.

(B) When a part of a tax-defaulted parcel is sold, the balance continues subject to redemption and shall be separately valued for the purpose of redemption in the manner provided by Chapter 2 (commencing with Section 4131) of Part 7.

(2) Before the tax collector sells vacant residential developed property pursuant to this subdivision, actual notice, by certified mail, shall be provided to the property owner, if the property owner's identity can be determined from the county assessor's or county recorder's records. The tax collector's power of sale shall not be affected by the failure of the property owner to receive notice.

(3) Before the tax collector sells vacant residential developed property pursuant to this subdivision, notice of the sale shall be given in the manner specified by Section 3704.7.

(c) The amendments made to this section by the act adding this subdivision apply to property that becomes tax defaulted on or after January 1, 2005.

SEC. 4. Section 3691.2 of the Revenue and Taxation Code is amended to read:

3691.2. The notice shall specify:

(a) A statement that five years or more, or three years or more in the case of nonresidential commercial property, as defined in Section 3691, in an applicable county, have elapsed since the taxes or assessments on the parcel were declared in default.

(b) That the property was duly assessed for taxation and the tax legally levied.

(c) That the property is subject to sale for nonpayment of taxes.

(d) The amount of taxes originally declared to be in default, unless there has been a partial cancellation of taxes, a redemption from a portion thereof, or a correction under Sections 4831.5 and 4876.5, in any of which events, the amount shall be the balance remaining.

(e) A metes and bounds or lot-block-tract description of the property.

SEC. 4.5. Section 3691.2 of the Revenue and Taxation Code is amended to read:

3691.2. The notice shall specify:

(a) A statement that five years or more have elapsed since the taxes or assessments on the parcel were declared in default; that three years or more in the case of nonresidential commercial property, as defined in Section 3691, have elapsed since the taxes or assessments on the parcel were declared in default; or that, pursuant to Section 3692.4, three years or more have elapsed and a request has been made by a city, county, city and county, or nonprofit organization to offer that property at the next scheduled public auction.

(b) That the property was duly assessed for taxation and the tax legally levied.

(c) That the property is subject to sale for nonpayment of taxes.

(d) The amount of taxes originally declared to be in default, unless there has been a partial cancellation of taxes, a redemption from a portion thereof, or a correction under Sections 4831.5 and 4876.5, in any of which events, the amount shall be the balance remaining.

(e) A metes and bounds or lot-block-tract description of the property.

SEC. 5. Section 3791 of the Revenue and Taxation Code is amended to read:

3791. Whenever property tax defaulted for five years or more, or three years or more in the case of nonresidential commercial property, as defined in Section 3691, in an applicable county, has been sold for taxes for two or more years or has been deeded for taxes to a taxing agency other than the state, the governing body of the taxing agency may, as provided in this article, make an agreement with the board of supervisors of the county in which the property is situated for the purchase of, or for an option to purchase, all or any of the tax-defaulted

property or any part thereof including a right-of-way or other easement. When a part of a tax-defaulted parcel is sold the balance continues subject to redemption, if the right of redemption has not been terminated, and shall be separately valued for the purpose of redemption in the manner provided by Chapter 2 (commencing with Section 4131) of Part 7 of this division, except that no application need be made.

SEC. 6. Section 3791.3 of the Revenue and Taxation Code is amended to read:

3791.3. Whenever property has been tax defaulted for five years or more, or three years or more in the case of nonresidential commercial property, as defined in Section 3691, in an applicable county, whether or not the property is subject to or has been sold or deeded for taxes to a taxing agency other than the state, the state, county, any revenue district the taxes of which on the property are collected by county officers, or a redevelopment agency created pursuant to the California Community Redevelopment Law, may purchase the property or any part thereof, including any right-of-way or other easement, pursuant to this chapter. A redevelopment agency, however, may only purchase this tax-defaulted property located within a designated survey area.

SEC. 7. Section 3792 of the Revenue and Taxation Code is amended to read:

3792. If property tax defaulted for more than five years, or more than three years in the case of nonresidential commercial property, as defined in Section 3691, in an applicable county, has been sold for taxes for two or more years or has been deeded for taxes to two or more taxing agencies, they may make a joint agreement with the board of supervisors under this article. The joint agreement may provide for the conveyance of all or any interest in the property to one of them or to any combination of them.

SEC. 8. Section 4217 of the Revenue and Taxation Code is amended to read:

4217. (a) Any person may elect to pay delinquent taxes in installments under this article at any time prior to 5 p.m. on June 30 of the fifth year, or the third year in the case of nonresidential commercial property, as defined in Section 3691, in an applicable county, after the property became tax defaulted, except that if payment of delinquent taxes in installments is started under this article and the amount required to be paid in any fiscal year is not paid as required by this article, payments on property that, but for the installment redemption plan, would have been subject to a power of sale pursuant to Section 3691 during the calendar year in which default on the redemption plan occurs may not again be started under this article. All other payments may be started on or after July 1 of the fiscal year commencing after the fiscal year in which default occurred.

(b) (1) A person electing to pay delinquent taxes in installments may be subject to a fee for processing the person's request.

(2) The fee for payment of delinquent taxes in installments to the tax collector may be established by ordinance by the board of supervisors. The fee shall be governed by the provisions of Chapter 12.5 (commencing with Section 54985) of Part 1 of Division 2 of Title 5 of the Government Code and may be collected on the tax bill.

SEC. 8.5. Section 4217 of the Revenue and Taxation Code is amended to read:

4217. (a) Any person may elect to pay delinquent taxes in installments under this article at any time prior to 5 p.m. on the last business day prior to the date when the tax collector obtains the power to sell the property, except that if payment of delinquent taxes in installments is started under this article and the amount required to be paid in any fiscal year is not paid as required by this article, payments on property that, but for the installment redemption plan, would have been subject to a power of sale pursuant to Section 3691 during the calendar year in which default on the redemption plan occurs may not again be started under this article. All other payments may be started on or after July 1 of the fiscal year commencing after the fiscal year in which default occurred.

(b) (1) A person electing to pay delinquent taxes in installments may be subject to a fee for processing the person's request.

(2) The fee for payment of delinquent taxes in installments to the tax collector may be established by ordinance by the board of supervisors. The fee shall be governed by the provisions of Chapter 12.5 (commencing with Section 54985) of Part 1 of Division 2 of Title 5 of the Government Code and may be collected on the tax bill.

SEC. 9. Section 1.5 of this bill incorporates the same substantive changes to Section 3361 of the Revenue and Taxation Code proposed by both this bill and SB 1596. 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 3361 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 1596, in which case Section 1 of this bill shall not become operative.

SEC. 10. Section 2.5 of this bill incorporates the same substantive changes to Section 3362 of the Revenue and Taxation Code proposed by both this bill and SB 1596. 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 3362 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 1596, in which case Section 2 of this bill shall not become operative.

SEC. 11. Section 3.5 of this bill incorporates amendments to Section 3691 of the Revenue and Taxation Code proposed by both this

bill and SB 1596. 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 3691 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 1596, in which case Section 3 of this bill shall not become operative.

SEC. 12. Section 4.5 of this bill incorporates the same substantive changes to Section 3691.2 of the Revenue and Taxation Code proposed by both this bill and SB 1596. 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 3691.2 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 1596, in which case Section 4 of this bill shall not become operative.

SEC. 13. Section 8.5 of this bill incorporates the same substantive changes to Section 4217 of the Revenue and Taxation Code proposed by both this bill and SB 1596. 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 4217 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 1596, in which case Section 8 of this bill shall not become operative.

CHAPTER 945

An act to add Chapter 1.5 (commencing with Section 103860) to Part 2 of Division 102 of the Health and Safety Code, relating to public health.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 2004.]

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

SECTION 1. Chapter 1.5 (commencing with Section 103860) is added to Part 2 of Division 102 of the Health and Safety Code, to read:

CHAPTER 1.5. PARKINSON'S DISEASE REGISTRY

103860. (a) The department shall conduct a program of epidemiological assessments of the incidence of Parkinson's disease. The program shall encompass all areas of the state for which Parkinson's disease incidence data are available. The program shall include the monitoring of Parkinson's disease associated with suspected chemical agents encountered by the general public both in occupational locations and in the environment generally.

(b) The program shall be under the direction of the director, who may enter into contracts as are necessary for the conduct of the program and may accept, on behalf of the state, grants of public or private funds for the program. The director shall analyze available incidence data and prepare reports as necessary to identify Parkinson's disease hazards to the public health and their remedies.

(c) This chapter shall be implemented only to the extent funds from federal or private sources are made available for this purpose. When the department determines that sufficient private or federal funds have been received for the implementation of this chapter, the department shall provide notification of the receipt of the funds on its Internet Web site and shall also provide that information to associations representing physicians and pharmacists, and directly to the California State Board of Pharmacy and the Medical Board of California within 90 days.

(d) The department is encouraged to convene a task force comprised of researchers with expertise in Parkinson's disease, advocates for patients with Parkinson's disease, and other individuals with relevant expertise to provide support and advice for the implementation and funding of the California Parkinson's Disease Registry.

103865. (a) The director shall establish a statewide system for the collection of information determining the incidence of Parkinson's disease. Commencing January 1, 2005, the director shall begin phasing in the statewide Parkinson's disease reporting regions. By July 1, 2006, all county or regional registries shall be implemented or initiated. By July 1, 2007, the statewide Parkinson's disease reporting system shall be fully operational. On or before June 1, 2005, the director shall submit an implementation and funding schedule to the Legislature.

(b) The department may designate any demographic parts of the state as regional Parkinson's disease incidence reporting areas and may establish regional Parkinson's disease registries, with the responsibility and authority to carry out the intent of this section in designated areas. Designated regional registries shall provide to the department, on a timely basis, Parkinson's disease incidence data as designated by the department. The department may contract with an agency, including, but not limited to, a health systems agency, single-county health department, multicounty health department grouping, or nonprofit professional association, representing a designated Parkinson's disease reporting region for the purposes of collecting and collating Parkinson's disease incidence data.

(c) The director shall designate Parkinson's disease as a disease required to be reported in the state or any demographic parts of the state in which Parkinson's disease information is collected under this section. All cases of Parkinson's disease diagnosed or treated in the reporting area shall thereafter be reported to the representative of the department

authorized to compile the Parkinson's disease data, or any individual, agency, or organization designated to cooperate with that representative.

(d) (1) Any hospital or other facility providing therapy to Parkinson's disease patients within an area designated as a Parkinson's disease reporting area shall report each case of Parkinson's disease to the department or the authorized representative of the department in a format prescribed by the department. If the hospital or other facility fails to report in a format prescribed by the department, the department's authorized representative may access the information from the hospital or the facility and report it in the appropriate format. In these cases, the hospital or other facility shall reimburse the department or the authorized representative for its costs to access and report the information.

(2) Any physician and surgeon, pharmacist, or other health care practitioner diagnosing or providing treatment for Parkinson's disease patients shall report each Parkinson's disease case to the department or the authorized representative of the department except for those cases directly referred to a treatment facility or those previously admitted to a treatment facility for diagnosis or treatment of that instance of Parkinson's disease.

(e) All physicians, hospitals, outpatient clinics, and all other facilities, individuals, or agencies providing diagnostic or treatment services to patients with Parkinson's disease shall grant to the department or the authorized representative access to all records that would identify cases of Parkinson's disease or would establish characteristics of Parkinson's disease, treatment of Parkinson's disease, or medical status of any identified Parkinson's disease patient. Willful failure to grant access to those records shall be punishable by a civil penalty of up to five hundred dollars ($500) each day access is refused. Any civil penalties collected pursuant to this subdivision shall be deposited by the department in the General Fund.

(f) (1) Except as otherwise provided in this section, all information collected pursuant to this section shall be confidential. For purposes of this section, this information shall be referred to as ''confidential information.''

(2) The department and any regional Parkinson's disease registry designated by the department shall use the information to determine the sources of Parkinson's disease.

(3) Persons with a valid scientific interest who are engaged in demographic, epidemiological, or other similar studies related to health who meet qualifications as determined by the department, and who agree, in writing, to maintain confidentiality, may be authorized access to confidential information.

(4) The department and any regional Parkinson's disease registry designated by the department may enter into agreements to furnish

confidential information to other states' Parkinson's disease registries, federal Parkinson's disease control agencies, local health officers, or health researchers for the purposes of determining the sources of Parkinson's disease and evaluating measures designed to eliminate, alleviate, or ameliorate their effect. Before confidential information is disclosed to those agencies, officers, researchers, or out-of-state registries, the requesting entity shall agree in writing to maintain the confidentiality of the information, and in the case of researchers, shall also do both of the following:

(A) Obtain approval of their committee for the protection of human subjects established in accordance with Part 46 (commencing with Section 46.101) of Title 45 of the Code of Federal Regulations.

(B) Provide documentation to the department that demonstrates to the department's satisfaction that the entity has established the procedures and ability to maintain the confidentiality of the information.

(5) Notwithstanding any other provision of law, any disclosure authorized by this section shall include only the information necessary for the stated purpose of the requested disclosure, used for the approved purpose, and not be further disclosed.

(6) The furnishing of confidential information to the department or its authorized representative in accordance with this section shall not expose any person, agency, or entity furnishing information to liability, and shall not be considered a waiver of any privilege or a violation of a confidential relationship.

(7) The department shall maintain an accurate record of all persons who are given access to confidential information. The record shall include: the name of the person authorizing access; name, title, address, and organizational affiliation of persons given access; dates of access; and the specific purpose for which information is to be used. The record of access shall be open to public inspection during normal operating hours of the department.

(8) Notwithstanding any other provision of law, no part of the confidential information shall be available for subpoena, nor shall it be disclosed, discoverable, or compelled to be produced in any civil, criminal, administrative, or other proceeding, nor shall this information be deemed admissible as evidence in any civil, criminal, administrative, or other tribunal or court for any reason.

(9) Nothing in this subdivision shall prohibit the publication by the department of reports and statistical compilations that do not in any way identify individual cases or individual sources of information.

(10) Notwithstanding the restrictions in this subdivision, the individual to whom the information pertains shall have access to his or her own information in accordance with Chapter 1 (commencing with Section 1798) of Title 1.8 of the Civil Code.

(g) For the purpose of this section, ''Parkinson's disease'' means a chronic and progressive neurologic disorder resulting from deficiency of the neurotransmitter dopamine as the consequence of degenerative, vascular, or inflammatory changes in the area of the brain called the basal ganglia. It is characterized by tremor at rest, slow movements, rigidity of movement, droopy posture, muscle weakness, and unsteady or shuffling gait.

(h) Nothing in this section shall preempt the authority of facilities or individuals providing diagnostic or treatment services to patients with Parkinson's disease to maintain their own facility-based Parkinson's disease registries.

CHAPTER 946

An act to amend Section 37202 of the Education Code, relating to kindergarten.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 2004.]

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

SECTION 1. Section 37202 of the Education Code is amended to read:

37202. (a) Except if a school has been closed by order of a city or a county board of health, or of the State Board of Health, on account of contagious disease, or if the school has been closed on account of fire, flood, or other public disaster, the governing board of a school district shall maintain all of the elementary day schools established by it for an equal length of time during the school year and all of the day high schools established by it for an equal length of time during the school year.

(b) Notwithstanding subdivision (a), a school district that is implementing an early primary program, pursuant to Chapter 8 (commencing with Section 8970) of Part 6, may maintain kindergarten classes at different schoolsites within the district for different lengths of time during the schoolday.

CHAPTER 947

An act to amend Section 377.60 of the Code of Civil Procedure, to amend Sections 297.5, 299, and 299.3 of the Family Code, and to amend

Section 14771 of the Government Code, relating to domestic partnerships.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 2004.]

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

SECTION 1. Section 377.60 of the Code of Civil Procedure is amended to read:

377.60. A cause of action for the death of a person caused by the wrongful act or neglect of another may be asserted by any of the following persons or by the decedent's personal representative on their behalf:

(a) The decedent's surviving spouse, domestic partner, children, and issue of deceased children, or, if there is no surviving issue of the decedent, the persons, including the surviving spouse or domestic partner, who would be entitled to the property of the decedent by intestate succession.

(b) Whether or not qualified under subdivision (a), if they were dependent on the decedent, the putative spouse, children of the putative spouse, stepchildren, or parents. As used in this subdivision, ''putative spouse'' means the surviving spouse of a void or voidable marriage who is found by the court to have believed in good faith that the marriage to the decedent was valid.

(c) A minor, whether or not qualified under subdivision (a) or (b), if, at the time of the decedent's death, the minor resided for the previous 180 days in the decedent's household and was dependent on the decedent for one-half or more of the minor's support.

(d) This section applies to any cause of action arising on or after January 1, 1993.

(e) The addition of this section by Chapter 178 of the Statutes of 1992 was not intended to adversely affect the standing of any party having standing under prior law, and the standing of parties governed by that version of this section as added by Chapter 178 of the Statutes of 1992 shall be the same as specified herein as amended by Chapter 563 of the Statutes of 1996.

(f) (1) For the purpose of this section, ''domestic partner'' means a person who, at the time of the decedent's death, was the domestic partner of the decedent in a registered domestic partnership established in accordance with subdivision (b) of Section 297 of the Family Code.

(2) Notwithstanding paragraph (1), for a death occurring prior to January 1, 2002, a person may maintain a cause of action pursuant to this section as a domestic partner of the decedent by establishing the factors listed in paragraphs (1) to (6), inclusive, of subdivision (b) of Section

297 of the Family Code, as it read pursuant to Section 3 of Chapter 893 of the Statutes of 2001, prior to its becoming inoperative on January 1, 2005.

(3) The amendments made to this subdivision during the 2003–04 Regular Session of the Legislature are not intended to revive any cause of action that has been fully and finally adjudicated by the courts, or that has been settled, or as to which the applicable limitations period has run.

SEC. 2. Section 297.5 of the Family Code is amended to read:

297.5. (a) Registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses.

(b) Former registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon former spouses.

(c) A surviving registered domestic partner, following the death of the other partner, shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon a widow or a widower.

(d) The rights and obligations of registered domestic partners with respect to a child of either of them shall be the same as those of spouses. The rights and obligations of former or surviving registered domestic partners with respect to a child of either of them shall be the same as those of former or surviving spouses.

(e) To the extent that provisions of California law adopt, refer to, or rely upon, provisions of federal law in a way that otherwise would cause registered domestic partners to be treated differently than spouses, registered domestic partners shall be treated by California law as if federal law recognized a domestic partnership in the same manner as California law.

(f) Registered domestic partners shall have the same rights regarding nondiscrimination as those provided to spouses.

(g) Notwithstanding this section, in filing their state income tax returns, domestic partners shall use the same filing status as is used on their federal income tax returns, or that would have been used had they

filed federal income tax returns. Earned income may not be treated as community property for state income tax purposes.

(h) No public agency in this state may discriminate against any person or couple on the ground that the person is a registered domestic partner rather than a spouse or that the couple are registered domestic partners rather than spouses, except that nothing in this section applies to modify eligibility for long-term care plans pursuant to Chapter 15 (commencing with Section 21660) of Part 3 of Division 5 of Title 2 of the Government Code.

(i) This act does not preclude any state or local agency from exercising its regulatory authority to implement statutes providing rights to, or imposing responsibilities upon, domestic partners.

(j) This section does not amend or modify any provision of the California Constitution or any provision of any statute that was adopted by initiative.

(k) This section does not amend or modify federal laws or the benefits, protections, and responsibilities provided by those laws.

(*l*) Where necessary to implement the rights of registered domestic partners under this act, gender-specific terms referring to spouses shall be construed to include domestic partners.

(m) (1) For purposes of the statutes, administrative regulations, court rules, government policies, common law, and any other provision or source of law governing the rights, protections, and benefits, and the responsibilities, obligations, and duties of registered domestic partners in this state, as effectuated by this section, with respect to community property, mutual responsibility for debts to third parties, the right in particular circumstances of either partner to seek financial support from the other following the dissolution of the partnership, and other rights and duties as between the partners concerning ownership of property, any reference to the date of a marriage shall be deemed to refer to the date of registration of a domestic partnership with the state.

(2) Notwithstanding paragraph (1), for domestic partnerships registered with the state before January 1, 2005, an agreement between the domestic partners that the partners intend to be governed by the requirements set forth in Sections 1600 to 1620, inclusive, and which complies with those sections, except for the agreement's effective date, shall be enforceable as provided by Sections 1600 to 1620, inclusive, if that agreement was fully executed and in force as of June 30, 2005.

SEC. 3. Section 299 of the Family Code, as added by Section 8 of Chapter 421 of the Statutes of 2003, is amended to read:

299. (a) A registered domestic partnership may be terminated without filing a proceeding for dissolution of domestic partnership by the filing of a Notice of Termination of Domestic Partnership with the

Secretary of State pursuant to this section, provided that all of the following conditions exist at the time of the filing:

(1) The Notice of Termination of Domestic Partnership is signed by both registered domestic partners.

(2) There are no children of the relationship of the parties born before or after registration of the domestic partnership or adopted by the parties after registration of the domestic partnership, and neither of the registered domestic partners, to their knowledge, is pregnant.

(3) The registered domestic partnership is not more than five years in duration.

(4) Neither party has any interest in real property wherever situated, with the exception of the lease of a residence occupied by either party which satisfies the following requirements:

(A) The lease does not include an option to purchase.

(B) The lease terminates within one year from the date of filing of the Notice of Termination of Domestic Partnership.

(5) There are no unpaid obligations in excess of the amount described in paragraph (6) of subdivision (a) of Section 2400, as adjusted by subdivision (b) of Section 2400, incurred by either or both of the parties after registration of the domestic partnership, excluding the amount of any unpaid obligation with respect to an automobile.

(6) The total fair market value of community property assets, excluding all encumbrances and automobiles, including any deferred compensation or retirement plan, is less than the amount described in paragraph (7) of subdivision (a) of Section 2400, as adjusted by subdivision (b) of Section 2400, and neither party has separate property assets, excluding all encumbrances and automobiles, in excess of that amount.

(7) The parties have executed an agreement setting forth the division of assets and the assumption of liabilities of the community property, and have executed any documents, title certificates, bills of sale, or other evidence of transfer necessary to effectuate the agreement.

(8) The parties waive any rights to support by the other domestic partner.

(9) The parties have read and understand a brochure prepared by the Secretary of State describing the requirements, nature, and effect of terminating a domestic partnership.

(10) Both parties desire that the domestic partnership be terminated.

(b) The registered domestic partnership shall be terminated effective six months after the date of filing of the Notice of Termination of Domestic Partnership with the Secretary of State pursuant to this section, provided that neither party has, before that date, filed with the Secretary of State a notice of revocation of the termination of domestic partnership, in the form and content as shall be prescribed by the

Secretary of State, and sent to the other party a copy of the notice of revocation by first-class mail, postage prepaid, at the other party's last known address. The effect of termination of a domestic partnership pursuant to this section shall be the same as, and shall be treated for all purposes as, the entry of a judgment of dissolution of a domestic partnership.

(c) The termination of a domestic partnership pursuant to subdivision (b) does not prejudice nor bar the rights of either of the parties to institute an action in the superior court to set aside the termination for fraud, duress, mistake, or any other ground recognized at law or in equity. A court may set aside the termination of domestic partnership and declare the termination of the domestic partnership null and void upon proof that the parties did not meet the requirements of subdivision (a) at the time of the filing of the Notice of Termination of Domestic Partnership with the Secretary of State.

(d) The superior courts shall have jurisdiction over all proceedings relating to the dissolution of domestic partnerships, nullity of domestic partnerships, and legal separation of partners in a domestic partnership. The dissolution of a domestic partnership, nullity of a domestic partnership, and legal separation of partners in a domestic partnership shall follow the same procedures, and the partners shall possess the same rights, protections, and benefits, and be subject to the same responsibilities, obligations, and duties, as apply to the dissolution of marriage, nullity of marriage, and legal separation of spouses in a marriage, respectively, except as provided in subdivision (a), and except that, in accordance with the consent acknowledged by domestic partners in the Declaration of Domestic Partnership form, proceedings for dissolution, nullity, or legal separation of a domestic partnership registered in this state may be filed in the superior courts of this state even if neither domestic partner is a resident of, or maintains a domicile in, the state at the time the proceedings are filed.

SEC. 4. Section 299.3 of the Family Code is amended to read:

299.3. (a) On or before June 30, 2004, and again on or before December 1, 2004, and again on or before January 31, 2005, the Secretary of State shall send the following letter to the mailing address on file of each registered domestic partner who registered more than one month prior to each of those dates:

''Dear Registered Domestic Partner:

This letter is being sent to all persons who have registered with the Secretary of State as a domestic partner.

Effective January 1, 2005, California's law related to the rights and responsibilities of registered domestic partners will change (or, if you are

receiving this letter after that date, the law has changed, as of January 1, 2005). With this new legislation, for purposes of California law, domestic partners will have a great many new rights and responsibilities, including laws governing community property, those governing property transfer, those regarding duties of mutual financial support and mutual responsibilities for certain debts to third parties, and many others. The way domestic partnerships are terminated is also changing. After January 1, 2005, under certain circumstances, it will be necessary to participate in a dissolution proceeding in court to end a domestic partnership.

Domestic partners who do not wish to be subject to these new rights and responsibilities MUST terminate their domestic partnership before January 1, 2005. Under the law in effect until January 1, 2005, your domestic partnership is automatically terminated if you or your partner marry or die while you are registered as domestic partners. It is also terminated if you send to your partner or your partner sends to you, by certified mail, a notice terminating the domestic partnership, or if you and your partner no longer share a common residence. In all cases, you are required to file a Notice of Termination of Domestic Partnership.

If you do not terminate your domestic partnership before January 1, 2005, as provided above, you will be subject to these new rights and responsibilities and, under certain circumstances, you will only be able to terminate your domestic partnership, other than as a result of domestic partner's death, by the filing of a court action.

Further, if you registered your domestic partnership with the state prior to January 1, 2005, you have until June 30, 2005, to enter into a written agreement with your domestic partner that will be enforceable in the same manner as a premarital agreement under California law, if you intend to be so governed.

If you have any questions about any of these changes, please consult an attorney. If you cannot find an attorney in your locale, please contact your county bar association for a referral.

Sincerely,

The Secretary of State''

(b) From January 1, 2004, to December 31, 2004, inclusive, the Secretary of State shall provide the following notice with all requests for the Declaration of Domestic Partnership form. The Secretary of State also shall attach the Notice to the Declaration of Domestic Partnership form that is provided to the general public on the Secretary of State's Web site:

''NOTICE TO POTENTIAL DOMESTIC PARTNER REGISTRANTS

As of January 1, 2005, California's law of domestic partnership will change.

Beginning at that time, for purposes of California law, domestic partners will have a great many new rights and responsibilities, including laws governing community property, those governing property transfer, those regarding duties of mutual financial support and mutual responsibilities for certain debts to third parties, and many others. The way domestic partnerships are terminated will also change. Unlike current law, which allows partners to end their partnership simply by filing a ''Termination of Domestic Partnership'' form with the Secretary of State, after January 1, 2005, it will be necessary under certain circumstances to participate in a dissolution proceeding in court to end a domestic partnership.

If you have questions about these changes, please consult an attorney. If you cannot find an attorney in your area, please contact your county bar association for a referral.''

SEC. 5. Section 14771 of the Government Code is amended to read:

14771. (a) The director, through the forms management center, shall do all of the following:

(1) Establish a State Forms Management Program for all state agencies, and provide assistance in establishing internal forms management capabilities.

(2) Study, develop, coordinate and initiate forms of interagency and common administrative usage, and establish basic state design and specification criteria to effect the standardization of public-use forms.

(3) Provide assistance to state agencies for economical forms design and forms artwork composition and establish and supervise control procedures to prevent the undue creation and reproduction of public-use forms.

(4) Provide assistance, training, and instruction in forms management techniques to state agencies, forms management representatives, and departmental forms coordinators, and provide direct administrative and forms management assistance to new state organizations as they are created.

(5) Maintain a central cross index of public-use forms to facilitate the standardization of these forms, to eliminate redundant forms, and to provide a central source of information on the usage and availability of forms.

(6) Utilize appropriate procurement techniques to take advantage of competitive bidding, consolidated orders, and contract procurement of

forms, and work directly with the Office of State Publishing toward more efficient, economical and timely procurement, receipt, storage, and distribution of state forms.

(7) Coordinate the forms management program with the existing state archives and records management program to ensure timely disposition of outdated forms and related records.

(8) Conduct periodic evaluations of the effectiveness of the overall forms management program and the forms management practices of the individual state agencies, and maintain records which indicate net dollar savings which have been realized through centralized forms management.

(9) Develop and promulgate rules and standards to implement the overall purposes of this section.

(10) Create and maintain by July 1, 1986, a complete and comprehensive inventory of public-use forms in current use by the state.

(11) Establish and maintain, by July 1, 1986, an index of all public-use forms in current use by the state.

(12) Assign, by January 1, 1987, a control number to all public-use forms in current use by the state.

(13) Establish a goal to reduce the existing burden of state collections of public information by 30 percent by July 1, 1987, and to reduce that burden by an additional 15 percent by July 1, 1988.

(14) Notwithstanding any other provision of law, including, but not limited to, Section 14774, provide notice to state agencies, forms management representatives, and departmental forms coordinators, that in the usual course of reviewing and revising all public-use forms that refer to or use the terms spouse, husband, wife, father, mother, marriage, or marital status, that appropriate references to state-registered domestic partner, parent, or state-registered domestic partnership are to be included.

(15) Delegate implementing authority to state agencies where the delegation will result in the most timely and economical method of accomplishing the responsibilities set forth in this section.

The director, through the forms management center, may require any agency to revise any public-use form which the director determines is inefficient.

(b) Due to the need for tax forms to be available to the public on a timely basis, all tax forms, including returns, schedules, notices, and instructions prepared by the Franchise Tax Board for public use in connection with its administration of the Personal Income Tax Law, Senior Citizens Property Tax Assistance and Postponement Law, Bank and Corporation Tax Law, and the Political Reform Act of 1974 and the State Board of Equalization's administration of county assessment standards, state-assessed property, timber tax, sales and use tax,

hazardous substances tax, alcoholic beverage tax, cigarette tax, motor vehicle fuel license tax, use fuel tax, energy resources surcharge, emergency telephone users surcharge, insurance tax, and universal telephone service tax shall be exempt from subdivision (a), and, instead, each board shall do all of the following:

(1) Establish a goal to standardize, consolidate, simplify, efficiently manage, and, where possible, reduce the number of tax forms.

(2) Create and maintain, by July 1, 1986, a complete and comprehensive inventory of tax forms in current use by the board.

(3) Establish and maintain, by July 1, 1986, an index of all tax forms in current use by the board.

(4) Report to the Legislature, by January 1, 1987, on its progress to improve the effectiveness and efficiency of all tax forms.

(c) The director, through the forms management center, shall develop and maintain, by December 31, 1995, an ongoing master inventory of all nontax reporting forms required of businesses by state agencies, including a schedule for notifying each state agency of the impending expiration of certain report review requirements pursuant to subdivision (b) of Section 14775.

CHAPTER 948

An act to add Section 16058.1 to the Vehicle Code, relating to vehicles.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 2004.]

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

SECTION 1. Section 16058.1 is added to the Vehicle Code, to read:

16058.1. The department shall develop a method by which law enforcement officers, on and after July 1, 2006, may electronically verify that an insurance policy or bond for a motor vehicle has been issued.

CHAPTER 949

An act to amend Section 4017.1 of the Penal Code, relating to sentenced persons.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 2004.]

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

SECTION 1. Section 4017.1 of the Penal Code is amended to read:

4017.1. (a) Except as provided in paragraph (2), any person confined in a county jail, industrial farm, road camp, or city jail who is required or permitted by an order of the board of supervisors or city council to perform work, and who is described in subdivision (b), and any person while performing community service in lieu of a fine or custody, or who is assigned to work furlough, who is described in subdivision (b), may not be employed to perform any function that provides access to personal information of private individuals, including, but not limited to: addresses; telephone numbers; health insurance, taxpayer, school, or employee identification numbers; mothers' maiden names; demand deposit account, debit card, credit card, savings, or checking account numbers, PINs, or passwords; social security numbers; places of employment; dates of birth; state or government issued driver's license or identification numbers; alien registration numbers; government passport numbers; unique biometric data, such as fingerprints, facial scan identifiers, voice prints, retina or iris images, or other similar identifiers; unique electronic identification numbers; address or routing codes; and telecommunication identifying information or access devices.

(2) Persons assigned to work furlough programs may be permitted to work in situations that allow them to retain or look at a driver's license or credit card for no longer than the period of time needed to complete an immediate transaction. However, no person assigned to work furlough shall be placed in any position that may require the deposit of a credit card or driver's license as insurance or surety.

(b) Subdivision (a) shall apply to a person who has been convicted of an offense described by any of the following categories:

(1) An offense involving forgery or fraud.

(2) An offense involving misuse of a computer.

(3) An offense for which the person is required to register as a sex offender pursuant to Section 290.

(4) An offense involving any misuse of the personal or financial information of another person.

(c) Any person confined in a county jail, industrial farm, road camp, or city jail who has access to any personal information shall disclose that he or she is confined before taking any personal information from anyone.

(d) This section shall not apply to inmates in employment programs or public service facilities where incidental contact with personal information may occur.

CHAPTER 950

An act to amend Section 1940.1 of the Civil Code, relating to tenancy.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 2004.]

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

SECTION 1. Section 1940.1 of the Civil Code is amended to read:

1940.1. (a) No person may require an occupant of a residential hotel, as defined in Section 50519 of the Health and Safety Code, to move, or to check out and reregister, before the expiration of 30 days occupancy if a purpose is to have that occupant maintain transient occupancy status pursuant to paragraph (1) of subdivision (b) of Section 1940. Evidence that an occupant was required to check out and reregister shall create a rebuttable presumption, which shall affect solely the burden of producing evidence, of the purpose referred to in this subdivision.

(b) In addition to any remedies provided by local ordinance, any violation of subdivision (a) is punishable by a civil penalty of five hundred dollars ($500). In any action brought pursuant to this section, the prevailing party shall be entitled to reasonable attorney's fees.

(c) Nothing in this section shall prevent a local governing body from establishing inspection authority or reporting or recordkeeping requirements to ensure compliance with this section.

CHAPTER 951

An act to amend Section 65302 of, and to repeal and add Section 65302.5 of, the Government Code, and to repeal Section 4128.5 of the Public Resources Code, relating to general plans.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 2004.]

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

SECTION 1. Section 65302 of the Government Code is amended to read:

65302. The general plan shall consist of a statement of development policies and shall include a diagram or diagrams and text setting forth objectives, principles, standards, and plan proposals. The plan shall include the following elements:

(a) A land use element that designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, including agriculture, natural resources, recreation, and enjoyment of scenic beauty, education, public buildings and grounds, solid and liquid waste disposal facilities, and other categories of public and private uses of land. The land use element shall include a statement of the standards of population density and building intensity recommended for the various districts and other territory covered by the plan. The land use element shall identify areas covered by the plan which are subject to flooding and shall be reviewed annually with respect to those areas. The land use element shall also do both of the following:

(1) Designate in a land use category that provides for timber production those parcels of real property zoned for timberland production pursuant to the California Timberland Productivity Act of 1982, Chapter 6.7 (commencing with Section 51100) of Part 1 of Division 1 of Title 5.

(2) Consider the impact of new growth on military readiness activities carried out on military bases, installations, and operating and training areas, when proposing zoning ordinances or designating land uses covered by the general plan for land, or other territory adjacent to military facilities, or underlying designated military aviation routes and airspace.

(A) In determining the impact of new growth on military readiness activities, information provided by military facilities shall be considered. Cities and counties shall address military impacts based on information that the military provides.

(B) The following definitions govern this paragraph:

(i) ''Military readiness activities'' mean all of the following:

(I) Training, support, and operations that prepare the men and women of the military for combat.

(II) Operation, maintenance, and security of any military installation.

(III) Testing of military equipment, vehicles, weapons, and sensors for proper operation or suitability for combat use.

(ii) ''Military installation'' means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the

jurisdiction of the United States Department of Defense as defined in paragraph (1) of subsection (e) of Section 2687 of Title 10 of the United States Code.

(b) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, any military airports and ports, and other local public utilities and facilities, all correlated with the land use element of the plan.

(c) A housing element as provided in Article 10.6 (commencing with Section 65580).

(d) A conservation element for the conservation, development, and utilization of natural resources including water and its hydraulic force, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals, and other natural resources. The conservation element shall consider the effect of development within the jurisdiction, as described in the land use element, on natural resources located on public lands, including military installations. That portion of the conservation element including waters shall be developed in coordination with any countywide water agency and with all district and city agencies that have developed, served, controlled or conserved water for any purpose for the county or city for which the plan is prepared. Coordination shall include the discussion and evaluation of any water supply and demand information described in Section 65352.5, if that information has been submitted by the water agency to the city or county. The conservation element may also cover the following:

(1) The reclamation of land and waters.

(2) Prevention and control of the pollution of streams and other waters.

(3) Regulation of the use of land in stream channels and other areas required for the accomplishment of the conservation plan.

(4) Prevention, control, and correction of the erosion of soils, beaches, and shores.

(5) Protection of watersheds.

(6) The location, quantity and quality of the rock, sand and gravel resources.

(7) Flood control.

The conservation element shall be prepared and adopted no later than December 31, 1973.

(e) An open-space element as provided in Article 10.5 (commencing with Section 65560).

(f) A noise element which shall identify and appraise noise problems in the community. The noise element shall recognize the guidelines established by the Office of Noise Control in the State Department of Health Services and shall analyze and quantify, to the extent practicable,

as determined by the legislative body, current and projected noise levels for all of the following sources:

(1) Highways and freeways.

(2) Primary arterials and major local streets.

(3) Passenger and freight on-line railroad operations and ground rapid transit systems.

(4) Commercial, general aviation, heliport, helistop, and military airport operations, aircraft overflights, jet engine test stands, and all other ground facilities and maintenance functions related to airport operation.

(5) Local industrial plants, including, but not limited to, railroad classification yards.

(6) Other ground stationary noise sources, including, but not limited to, military installations, identified by local agencies as contributing to the community noise environment.

Noise contours shall be shown for all of these sources and stated in terms of community noise equivalent level (CNEL) or day-night average level (L_{dn}). The noise contours shall be prepared on the basis of noise monitoring or following generally accepted noise modeling techniques for the various sources identified in paragraphs (1) to (6), inclusive.

The noise contours shall be used as a guide for establishing a pattern of land uses in the land use element that minimizes the exposure of community residents to excessive noise.

The noise element shall include implementation measures and possible solutions that address existing and foreseeable noise problems, if any. The adopted noise element shall serve as a guideline for compliance with the state's noise insulation standards.

(g) A safety element for the protection of the community from any unreasonable risks associated with the effects of seismically induced surface rupture, ground shaking, ground failure, tsunami, seiche, and dam failure; slope instability leading to mudslides and landslides; subsidence, liquefaction and other seismic hazards identified pursuant to Chapter 7.8 (commencing with Section 2690) of the Public Resources Code, and other geologic hazards known to the legislative body; flooding; and wild land and urban fires. The safety element shall include mapping of known seismic and other geologic hazards. It shall also address evacuation routes, military installations, peakload water supply requirements, and minimum road widths and clearances around structures, as those items relate to identified fire and geologic hazards.

(1) Prior to the periodic review of its general plan and prior to preparing or revising its safety element, each city and county shall consult the Division of Mines and Geology of the Department of Conservation and the Office of Emergency Services for the purpose of

including information known by and available to the department and the office required by this subdivision.

(2) To the extent that a county's safety element is sufficiently detailed and contains appropriate policies and programs for adoption by a city, a city may adopt that portion of the county's safety element that pertains to the city's planning area in satisfaction of the requirement imposed by this subdivision.

SEC. 1.3. Section 65302 of the Government Code is amended to read:

65302. The general plan shall consist of a statement of development policies and shall include a diagram or diagrams and text setting forth objectives, principles, standards, and plan proposals. The plan shall include the following elements:

(a) A land use element that designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, agriculture, natural resources, recreation, and enjoyment of scenic beauty, education, public buildings and grounds, solid and liquid waste disposal facilities, and other categories of public and private uses of land. The land use element shall include a statement of the standards of population density and building intensity recommended for the various districts and other territory covered by the plan. The land use element shall identify areas covered by the plan that are subject to flooding and shall be reviewed annually with respect to those areas. The land use element shall also do both of the following:

(1) Designate in a land use category that provides for timber production those parcels of real property zoned for timberland production pursuant to the California Timberland Productivity Act of 1982, Chapter 6.7 (commencing with Section 51100) of Part 1 of Division 1 of Title 5.

(2) Consider the impact of new growth on military readiness activities carried out on military bases, installations, and operating and training areas, when proposing zoning ordinances or designating land uses covered by the general plan for land, or other territory adjacent to military facilities, or underlying designated military aviation routes and airspace.

(A) In determining the impact of new growth on military readiness activities, information provided by military facilities shall be considered. Cities and counties shall address military impacts based on information from the military and other sources.

(B) The following definitions govern this paragraph:

(i) ''Military readiness activities'' mean all of the following:

(I) Training, support, and operations that prepare the men and women of the military for combat.

(II) Operation, maintenance, and security of any military installation.

(III) Testing of military equipment, vehicles, weapons, and sensors for proper operation or suitability for combat use.

(ii) ''Military installation'' means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the United States Department of Defense as defined in paragraph (1) of subsection (e) of Section 2687 of Title 10 of the United States Code.

(b) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, any military airports and ports, and other local public utilities and facilities, all correlated with the land use element of the plan.

(c) A housing element as provided in Article 10.6 (commencing with Section 65580).

(d) A conservation element for the conservation, development, and utilization of natural resources including water and its hydraulic force, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals, and other natural resources. The conservation element shall consider the effect of development within the jurisdiction, as described in the land use element, on natural resources located on public lands, including military installations. That portion of the conservation element including waters shall be developed in coordination with any countywide water agency and with all district and city agencies that have developed, served, controlled or conserved water for any purpose for the county or city for which the plan is prepared. Coordination shall include the discussion and evaluation of any water supply and demand information described in Section 65352.5, if that information has been submitted by the water agency to the city or county. The conservation element may also cover the following:

(1) The reclamation of land and waters.

(2) Prevention and control of the pollution of streams and other waters.

(3) Regulation of the use of land in stream channels and other areas required for the accomplishment of the conservation plan.

(4) Prevention, control, and correction of the erosion of soils, beaches, and shores.

(5) Protection of watersheds.

(6) The location, quantity and quality of the rock, sand and gravel resources.

(7) Flood control.

(8) Conservation of agricultural lands.

The conservation element shall be prepared and adopted no later than December 31, 1973.

(e) An agricultural and open-space element as provided in Article 10.5 (commencing with Section 65560).

(f) A noise element which shall identify and appraise noise problems in the community. The noise element shall recognize the guidelines established by the Office of Noise Control in the State Department of Health Services and shall analyze and quantify, to the extent practicable, as determined by the legislative body, current and projected noise levels for all of the following sources:

(1) Highways and freeways.

(2) Primary arterials and major local streets.

(3) Passenger and freight on-line railroad operations and ground rapid transit systems.

(4) Commercial, general aviation, heliport, helistop, and military airport operations, aircraft overflights, jet engine test stands, and all other ground facilities and maintenance functions related to airport operation.

(5) Local industrial plants, including, but not limited to, railroad classification yards.

(6) Other ground stationary noise sources, including, but not limited to, military installations, identified by local agencies as contributing to the community noise environment.

Noise contours shall be shown for all of these sources and stated in terms of community noise equivalent level (CNEL) or day-night average level (L_{dn}). The noise contours shall be prepared on the basis of noise monitoring or following generally accepted noise modeling techniques for the various sources identified in paragraphs (1) to (6), inclusive.

The noise contours shall be used as a guide for establishing a pattern of land uses in the land use element that minimizes the exposure of community residents to excessive noise.

The noise element shall include implementation measures and possible solutions that address existing and foreseeable noise problems, if any. The adopted noise element shall serve as a guideline for compliance with the state's noise insulation standards.

(g) A safety element for the protection of the community from any unreasonable risks associated with the effects of seismically induced surface rupture, ground shaking, ground failure, tsunami, seiche, and dam failure; slope instability leading to mudslides and landslides; subsidence, liquefaction and other seismic hazards identified pursuant to Chapter 7.8 (commencing with Section 2690) of the Public Resources Code, and other geologic hazards known to the legislative body; flooding; and wild land and urban fires. The safety element shall include mapping of known seismic and other geologic hazards. It shall also address evacuation routes, military installations, peakload water supply

requirements, and minimum road widths and clearances around structures, as those items relate to identified fire and geologic hazards.

(1) Prior to the periodic review of its general plan and prior to preparing or revising its safety element, each city and county shall consult the Division of Mines and Geology of the Department of Conservation and the Office of Emergency Services for the purpose of including information known by and available to the department and the office required by this subdivision.

(2) To the extent that a county's safety element is sufficiently detailed and contains appropriate policies and programs for adoption by a city, a city may adopt that portion of the county's safety element that pertains to the city's planning area in satisfaction of the requirement imposed by this subdivision.

SEC. 1.5. Section 65302 of the Government Code is amended to read:

65302. The general plan shall consist of a statement of development policies and shall include a diagram or diagrams and text setting forth objectives, principles, standards, and plan proposals. The plan shall include the following elements:

(a) A land use element that designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, agriculture, natural resources, recreation, and enjoyment of scenic beauty, education, public buildings and grounds, solid and liquid waste disposal facilities, and other categories of public and private uses of land. The land use element shall include a statement of the standards of population density and building intensity recommended for the various districts and other territory covered by the plan. The land use element shall identify areas covered by the plan that are subject to flooding and shall be reviewed annually with respect to those areas. The land use element shall also do both of the following:

(1) Designate in a land use category that provides for timber production those parcels of real property zoned for timberland production pursuant to the California Timberland Productivity Act of 1982, Chapter 6.7 (commencing with Section 51100) of Part 1 of Division 1 of Title 5.

(2) Consider the impact of new growth on military readiness activities carried out on military bases, installations, and operating and training areas, when proposing zoning ordinances or designating land uses covered by the general plan for land, or other territory adjacent to military facilities, or underlying designated military aviation routes and airspace.

(A) In determining the impact of new growth on military readiness activities, information provided by military facilities shall be

considered. Cities and counties shall address military impacts based on information that the military provides.

(B) The following definitions govern this paragraph:

(i) ''Military readiness activities'' mean all of the following:

(I) Training, support, and operations that prepare the men and women of the military for combat.

(II) Operation, maintenance, and security of any military installation.

(III) Testing of military equipment, vehicles, weapons, and sensors for proper operation or suitability for combat use.

(ii) ''Military installation'' means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the United States Department of Defense as defined in paragraph (1) of subsection (e) of Section 2687 of Title 10 of the United States Code.

(b) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, any military airports and ports, and other local public utilities and facilities, all correlated with the land use element of the plan.

(c) A housing element as provided in Article 10.6 (commencing with Section 65580).

(d) A conservation element for the conservation, development, and utilization of natural resources including water and its hydraulic force, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals, and other natural resources. The conservation element shall consider the effect of development within the jurisdiction, as described in the land use element, on natural resources located on public lands, including military installations. That portion of the conservation element including waters shall be developed in coordination with any countywide water agency and with all district and city agencies that have developed, served, controlled or conserved water for any purpose for the county or city for which the plan is prepared. Coordination shall include the discussion and evaluation of any water supply and demand information described in Section 65352.5, if that information has been submitted by the water agency to the city or county. The conservation element may also cover the following:

(1) The reclamation of land and waters.

(2) Prevention and control of the pollution of streams and other waters.

(3) Regulation of the use of land in stream channels and other areas required for the accomplishment of the conservation plan.

(4) Prevention, control, and correction of the erosion of soils, beaches, and shores.

(5) Protection of watersheds.

(6) The location, quantity and quality of the rock, sand and gravel resources.

(7) Flood control.

(8) Conservation of agricultural lands.

The conservation element shall be prepared and adopted no later than December 31, 1973.

(e) An agricultural and open-space element as provided in Article 10.5 (commencing with Section 65560).

(f) A noise element which shall identify and appraise noise problems in the community. The noise element shall recognize the guidelines established by the Office of Noise Control in the State Department of Health Services and shall analyze and quantify, to the extent practicable, as determined by the legislative body, current and projected noise levels for all of the following sources:

(1) Highways and freeways.

(2) Primary arterials and major local streets.

(3) Passenger and freight on-line railroad operations and ground rapid transit systems.

(4) Commercial, general aviation, heliport, helistop, and military airport operations, aircraft overflights, jet engine test stands, and all other ground facilities and maintenance functions related to airport operation.

(5) Local industrial plants, including, but not limited to, railroad classification yards.

(6) Other ground stationary noise sources, including, but not limited to, military installations, identified by local agencies as contributing to the community noise environment.

Noise contours shall be shown for all of these sources and stated in terms of community noise equivalent level (CNEL) or day-night average level (L_{dn}). The noise contours shall be prepared on the basis of noise monitoring or following generally accepted noise modeling techniques for the various sources identified in paragraphs (1) to (6), inclusive.

The noise contours shall be used as a guide for establishing a pattern of land uses in the land use element that minimizes the exposure of community residents to excessive noise.

The noise element shall include implementation measures and possible solutions that address existing and foreseeable noise problems, if any. The adopted noise element shall serve as a guideline for compliance with the state's noise insulation standards.

(g) A safety element for the protection of the community from any unreasonable risks associated with the effects of seismically induced surface rupture, ground shaking, ground failure, tsunami, seiche, and dam failure; slope instability leading to mudslides and landslides; subsidence, liquefaction and other seismic hazards identified pursuant

to Chapter 7.8 (commencing with Section 2690) of the Public Resources Code, and other geologic hazards known to the legislative body; flooding; and wild land and urban fires. The safety element shall include mapping of known seismic and other geologic hazards. It shall also address evacuation routes, military installations, peakload water supply requirements, and minimum road widths and clearances around structures, as those items relate to identified fire and geologic hazards.

(1) Prior to the periodic review of its general plan and prior to preparing or revising its safety element, each city and county shall consult the Division of Mines and Geology of the Department of Conservation and the Office of Emergency Services for the purpose of including information known by and available to the department and the office required by this subdivision.

(2) To the extent that a county's safety element is sufficiently detailed and contains appropriate policies and programs for adoption by a city, a city may adopt that portion of the county's safety element that pertains to the city's planning area in satisfaction of the requirement imposed by this subdivision.

SEC. 1.7. Section 65302 of the Government Code is amended to read:

65302. The general plan shall consist of a statement of development policies and shall include a diagram or diagrams and text setting forth objectives, principles, standards, and plan proposals. The plan shall include the following elements:

(a) A land use element that designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, including agriculture, natural resources, recreation, and enjoyment of scenic beauty, education, public buildings and grounds, solid and liquid waste disposal facilities, and other categories of public and private uses of land. The land use element shall include a statement of the standards of population density and building intensity recommended for the various districts and other territory covered by the plan. The land use element shall identify areas covered by the plan which are subject to flooding and shall be reviewed annually with respect to those areas. The land use element shall also do both of the following:

(1) Designate in a land use category that provides for timber production those parcels of real property zoned for timberland production pursuant to the California Timberland Productivity Act of 1982, Chapter 6.7 (commencing with Section 51100) of Part 1 of Division 1 of Title 5.

(2) Consider the impact of new growth on military readiness activities carried out on military bases, installations, and operating and training areas, when proposing zoning ordinances or designating land

uses covered by the general plan for land, or other territory adjacent to military facilities, or underlying designated military aviation routes and airspace.

(A) In determining the impact of new growth on military readiness activities, information provided by military facilities shall be considered. Cities and counties shall address military impacts based on information from the military and other sources.

(B) The following definitions govern this paragraph:

(i) ''Military readiness activities'' mean all of the following:

(I) Training, support, and operations that prepare the men and women of the military for combat.

(II) Operation, maintenance, and security of any military installation.

(III) Testing of military equipment, vehicles, weapons, and sensors for proper operation or suitability for combat use.

(ii) ''Military installation'' means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the United States Department of Defense as defined in paragraph (1) of subsection (e) of Section 2687 of Title 10 of the United States Code.

(b) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, any military airports and ports, and other local public utilities and facilities, all correlated with the land use element of the plan.

(c) A housing element as provided in Article 10.6 (commencing with Section 65580).

(d) A conservation element for the conservation, development, and utilization of natural resources including water and its hydraulic force, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals, and other natural resources. The conservation element shall consider the effect of development within the jurisdiction, as described in the land use element, on natural resources located on public lands, including military installations. That portion of the conservation element including waters shall be developed in coordination with any countywide water agency and with all district and city agencies that have developed, served, controlled or conserved water for any purpose for the county or city for which the plan is prepared. Coordination shall include the discussion and evaluation of any water supply and demand information described in Section 65352.5, if that information has been submitted by the water agency to the city or county. The conservation element may also cover the following:

(1) The reclamation of land and waters.

(2) Prevention and control of the pollution of streams and other waters.

(3) Regulation of the use of land in stream channels and other areas required for the accomplishment of the conservation plan.

(4) Prevention, control, and correction of the erosion of soils, beaches, and shores.

(5) Protection of watersheds.

(6) The location, quantity and quality of the rock, sand and gravel resources.

(7) Flood control.

The conservation element shall be prepared and adopted no later than December 31, 1973.

(e) An open-space element as provided in Article 10.5 (commencing with Section 65560).

(f) A noise element which shall identify and appraise noise problems in the community. The noise element shall recognize the guidelines established by the Office of Noise Control in the State Department of Health Services and shall analyze and quantify, to the extent practicable, as determined by the legislative body, current and projected noise levels for all of the following sources:

(1) Highways and freeways.

(2) Primary arterials and major local streets.

(3) Passenger and freight on-line railroad operations and ground rapid transit systems.

(4) Commercial, general aviation, heliport, helistop, and military airport operations, aircraft overflights, jet engine test stands, and all other ground facilities and maintenance functions related to airport operation.

(5) Local industrial plants, including, but not limited to, railroad classification yards.

(6) Other ground stationary noise sources, including, but not limited to, military installations, identified by local agencies as contributing to the community noise environment.

Noise contours shall be shown for all of these sources and stated in terms of community noise equivalent level (CNEL) or day-night average level (L_{dn}). The noise contours shall be prepared on the basis of noise monitoring or following generally accepted noise modeling techniques for the various sources identified in paragraphs (1) to (6), inclusive.

The noise contours shall be used as a guide for establishing a pattern of land uses in the land use element that minimizes the exposure of community residents to excessive noise.

The noise element shall include implementation measures and possible solutions that address existing and foreseeable noise problems, if any. The adopted noise element shall serve as a guideline for compliance with the state's noise insulation standards.

(g) A safety element for the protection of the community from any unreasonable risks associated with the effects of seismically induced surface rupture, ground shaking, ground failure, tsunami, seiche, and dam failure; slope instability leading to mudslides and landslides; subsidence, liquefaction and other seismic hazards identified pursuant to Chapter 7.8 (commencing with Section 2690) of the Public Resources Code, and other geologic hazards known to the legislative body; flooding; and wild land and urban fires. The safety element shall include mapping of known seismic and other geologic hazards. It shall also address evacuation routes, military installations, peakload water supply requirements, and minimum road widths and clearances around structures, as those items relate to identified fire and geologic hazards.

(1) Prior to the periodic review of its general plan and prior to preparing or revising its safety element, each city and county shall consult the Division of Mines and Geology of the Department of Conservation and the Office of Emergency Services for the purpose of including information known by and available to the department and the office required by this subdivision.

(2) To the extent that a county's safety element is sufficiently detailed and contains appropriate policies and programs for adoption by a city, a city may adopt that portion of the county's safety element that pertains to the city's planning area in satisfaction of the requirement imposed by this subdivision.

SEC. 2. Section 65302.5 of the Government Code is repealed.

SEC. 3. Section 65302.5 is added to the Government Code, to read:

65302.5. (a) At least 45 days prior to adoption or amendment of the safety element, each county and city shall submit to the Division of Mines and Geology of the Department of Conservation one copy of a draft of the safety element or amendment and any technical studies used for developing the safety element. The division may review drafts submitted to it to determine whether they incorporate known seismic and other geologic hazard information, and report its findings to the planning agency within 30 days of receipt of the draft of the safety element or amendment pursuant to this subdivision. The legislative body shall consider the division's findings prior to final adoption of the safety element or amendment unless the division's findings are not available within the above prescribed time limits or unless the division has indicated to the city or county that the division will not review the safety element. If the division's findings are not available within those prescribed time limits, the legislative body may take the division's findings into consideration at the time it considers future amendments to the safety element. Each county and city shall provide the division with a copy of its adopted safety element or amendments. The division may review adopted safety elements or amendments and report its

findings. All findings made by the division shall be advisory to the planning agency and legislative body.

(1) The draft element of or draft amendment to the safety element of a county or a city's general plan shall be submitted to the State Board of Forestry and Fire Protection and to every local agency that provides fire protection to territory in the city or county at least 90 days prior to either of the following:

(A) The adoption or amendment to the safety element of its general plan for each county that contains state responsibility areas.

(B) The adoption or amendment to the safety element of its general plan for each city or county that contains a very high fire hazard severity zone as defined pursuant to subdivision (b) of Section 51177.

(2) A county that contains state responsibility areas and a city or county that contains a very high fire hazard severity zone as defined pursuant to subdivision (b) of Section 51177, shall submit for review the safety element of its general plan to the State Board of Forestry and Fire Protection and to every local agency that provides fire protection to territory in the city or county in accordance with the following dates as specified, unless the local government submitted the element within five years prior to that date:

(A) Local governments within the regional jurisdiction of the San Diego Association of Governments: December 31, 2010.

(B) Local governments within the regional jurisdiction of the Southern California Association of Governments: December 31, 2011.

(C) Local governments within the regional jurisdiction of the Association of Bay Area Governments: December 31, 2012.

(D) Local governments within the regional jurisdiction of the Council of Fresno County Governments, the Kern County Council of Governments, and the Sacramento Area Council of Governments: June 30, 2013.

(E) Local governments within the regional jurisdiction of the Association of Monterey Bay Area Governments: December 31, 2014.

(F) All other local governments: December 31, 2015.

(3) The State Board of Forestry and Fire Protection shall, and a local agency may, review the draft or an existing safety element and report its written recommendations to the planning agency within 60 days of its receipt of the draft or existing safety element. The State Board of Forestry and Fire Protection and local agency shall review the draft or existing safety element and may offer written recommendations for changes to the draft or existing safety element regarding both of the following:

(A) Uses of land and policies in state responsibility areas and very high fire hazard severity zones that will protect life, property, and natural resources from unreasonable risks associated with wildland fires.

(B) Methods and strategies for wildland fire risk reduction and prevention within state responsibility areas and very high hazard severity zones.

(b) Prior to the adoption of its draft element or draft amendment, the board of supervisors of the county or the city council of a city shall consider the recommendations made by the State Board of Forestry and Fire Protection and any local agency that provides fire protection to territory in the city or county. If the board of supervisors or city council determines not to accept all or some of the recommendations, if any, made by the State Board of Forestry and Fire Protection or local agency, the board of supervisors or city council shall communicate in writing to the State Board of Forestry and Fire Protection or to the local agency, its reasons for not accepting the recommendations.

(c) If the State Board of Forestry and Fire Protection or local agency's recommendations are not available within the time limits required by this section, the board of supervisors or city council may act without those recommendations. The board of supervisors or city council shall take the recommendations into consideration at the next time it considers amendments pursuant to paragraph (1) of subdivision (a).

SEC. 4. Section 4128.5 of the Public Resources Code is repealed.

SEC. 5. Section 1.3 of this bill incorporates amendments to Section 65302 of the Government Code proposed by this bill, AB 2055, and SB 926. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2005, (2) each bill amends Section 65302 of the Government Code, and (3) this bill is enacted after AB 2055 and SB 926, in which case Section 65302 of the Government Code, as amended by SB 926, shall remain operative only until the operative date of this bill, at which time Section 1.3 of this bill shall become operative, and Sections 1, 1.5, and 1.7 of this bill shall not become operative.

SEC. 6. Section 1.5 of this bill incorporates amendments to Section 65302 of the Government Code proposed by this bill and AB 2055, but not the changes proposed by SB 926. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2005, (2) SB 926 is not enacted, (3) each bill amends Section 65302 of the Government Code, and (4) this bill is enacted after AB 2055, in which case Sections 1, 1.3, and 1.7 of this bill shall not become operative.

SEC. 7. Section 1.7 of this bill incorporates amendments to Section 65302 of the Government Code proposed by this bill and SB 926, but not the changes proposed by AB 2055. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2005, (2) AB 2055 is not enacted, (3) each bill amends Section 65302 of the Government Code, and (4) this bill is enacted after SB 926, in

which case Section 65302 of the Government Code, as amended by SB 926, shall remain operative only until the operative date of this bill, at which time Section 1.7 of this bill shall become operative, and Sections 1, 1.3, and 1.5 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 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 952

An act to amend Sections 1803.5, 2800, 12505, 12517, 12517.4, 12804.9, 13353, 13353.4, 13353.7, 13369, 14601.5, 15210, 15278, 15300, 15302, 15304, 15306, 15308, 15311, 15312, 16073, 16431, 22406.1, 41501, and 42005 of, to amend and repeal Section 13353.6 of, and to add Sections 13366.5, 15275.1, 15311.1, 15312.1, and 15325 to, the Vehicle Code, relating to vehicles, and making an appropriation therefor.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 2004.]

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

SECTION 1. (a) In conformance with the amendments to Parts 350, 383, 384, and 390 of Title 49 of the Code of Federal Regulations, as authorized by the Motor Carrier Safety Improvement Act of 1999 (P.L. 106-159), the Legislature finds and declares the following:

(1) Holders of commercial driver's licenses are professional drivers. They operate large, heavy motor vehicles, and often transport hazardous materials or vulnerable passengers. Given their status as professionals, drivers should be held to higher standards of conduct when operating a motor vehicle of any class.

(2) A change in Parts 350, 383, 384, and 390 of Title 49 of the Code of Federal Regulations, that may be authorized by an amendment to the Motor Carrier Safety Improvement Act of 1999 (P.L. 106-159), that will impact the disqualification criteria for any holder of a commercial driver's licenseholder, shall be incorporated into California law as soon as practicable following the adoption of that federal regulation.

(b) Any cause for disqualification of the commercial driving privilege enacted under the authority of the Motor Carrier Safety

Improvement Act of 1999 (P.L. 106-159), may only be applied to violations that occur on or after September 20, 2005.

SEC. 1.2. Section 1803.5 of the Vehicle Code is amended to read:

1803.5. (a) In accordance with Section 41501 or 42005, the clerk of a court or hearing officer, when a person who receives a notice to appear at a court or board proceeding for a violation of any statute relating to the safe operation of vehicles is granted a continuance of the proceeding in consideration for attendance at a school for traffic violators, a licensed driving school, or any other court-approved program of driving instruction, and which results in a dismissal of the complaint in consideration for that attendance, shall prepare an abstract of the record of the court or board proceeding, certify the abstract to be true and correct, and cause the abstract to be forwarded to the department at its office at Sacramento within 10 days after the complaint is dismissed.

(b) This section shall become operative on September 20, 2005.

SEC. 1.3. Section 1803.5 of the Vehicle Code is amended to read:

1803.5. (a) Every clerk of a court or hearing officer, when a person who receives a notice to appear at a court or board proceeding for a violation of any statute relating to the safe operation of a vehicle is granted a continuance of the proceeding in consideration for completion of a program of traffic safety instruction at a school for traffic violators licensed by the department or a licensed driving school, and which results in a dismissal of the complaint in consideration for that completion, shall prepare an abstract of the record of the court or board proceeding, certify the abstract to be true and correct, and cause the abstract to be forwarded to the department at its office at Sacramento within 10 days after the complaint is dismissed.

(b) 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. 1.5. Section 1803.5 is added to the Vehicle Code, to read:

1803.5. (a) In accordance with Section 41501 or 42005, the clerk of a court or hearing officer, when a person who receives a notice to appear at a court or board proceeding for a violation of a statute relating to the safe operation of a vehicle is granted a continuance of the proceeding in consideration for completion of a program of traffic safety instruction at a school for traffic violators licensed by the department or a licensed driving school, and which results in a dismissal of the complaint in consideration for that completion, shall prepare an abstract of the record of the court or board proceeding, certify the abstract to be true and correct, and cause the abstract to be forwarded to the department

at its office at Sacramento within 10 days after the complaint is dismissed.

(b) This section shall become operative on September 20, 2005.

SEC. 2. Section 2800 of the Vehicle Code is amended to read:

2800. (a) It is unlawful to willfully fail or refuse to comply with any lawful order, signal, or direction of any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, when that peace officer is in uniform and is performing duties under any of the provisions of this code, or to refuse to submit to any lawful inspection under this code.

(b) Except as authorized under Section 24004, it is unlawful to fail or refuse to comply with any lawful out-of-service order issued by any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, when that peace officer is in uniform and is performing duties under any provision of this code and the out-of-service order complies with Title 49 of the Code of Federal Regulations.

(c) It is unlawful to fail or refuse to comply with a lawful out-of-service order issued by the United States Secretary of the Department of Transportation.

(d) This section shall become operative on September 20, 2005.

SEC. 3. Section 12505 of the Vehicle Code is amended to read:

12505. (a) (1) For purposes of this division only and notwithstanding Section 516, residency shall be determined as a person's state of domicile. ''State of domicile'' means the state where a 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.

Prima facie evidence of residency for driver's licensing purposes includes, but is not limited to, the following:

(A) Address where registered to vote.

(B) Payment of resident tuition at a public institution of higher education.

(C) Filing a homeowner's property tax exemption.

(D) Other acts, occurrences, or events that indicate presence in the state is more than temporary or transient.

(2) California residency is required of a person in order to be issued a commercial driver's license under this code.

(b) The presumption of residency in this state may be rebutted by satisfactory evidence that the licensee's primary residence is in another state.

(c) Any person entitled to an exemption under Section 12502, 12503, or 12504 may operate a motor vehicle in this state for not to exceed 10 days from the date he or she establishes residence in this state, except that

he or she shall obtain a license from the department upon becoming a resident before being employed for compensation by another for the purpose of driving a motor vehicle on the highways.

(d) If the State of California is decertified by the federal government and prohibited from issuing an initial, renewal, or upgraded commercial driver's license pursuant to Section 384.405 of Title 49 of the Code of Federal Regulations, the following applies:

(1) An existing commercial driver's license issued pursuant to this code prior to the date that the state is notified of its decertification shall remain valid until its expiration date.

(2) A person who is a resident of this state may obtain a nonresident commercial driver's license from any state that elects to issue a nonresident commercial driver's license and that complies with the testing and licensing standards contained in subparts F, G, and H of Part 383 of Title 49 of the Code of Federal Regulations.

(3) For the purposes of this subdivision, a nonresident commercial driver's license is a commercial driver's license issued by a state to an individual domiciled in a foreign country or in another state.

(e) Subject to Section 12504, a person over the age of 16 years who is a resident of a foreign jurisdiction other than a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or Canada, having a valid driver's license issued to him or her by any other foreign jurisdiction having licensing standards deemed by the Department of Motor Vehicles equivalent to those of this state, may operate a motor vehicle in this state without obtaining a license from the department, except that he or she shall obtain a license before being employed for compensation by another for the purpose of driving a motor vehicle on the highways.

(f) Any person from a foreign country, except a territory or possession of the United States, the Commonwealth of Puerto Rico, or Canada, shall obtain a class A or a class B license from the department before operating on the highways a motor vehicle for which a class A or class B license is required, as described in Section 12804.9. The medical examination form required for issuance of a class A or class B driver's license shall be completed by a health care professional, as defined in paragraph (2) of subdivision (a) of Section 12804.9, who is licensed, certified, or registered to perform physical examinations in the United States of America. This subdivision does not apply to (1) drivers of schoolbuses operated in California on a trip for educational purposes or (2) drivers of vehicles used to provide the services of a local public agency.

(g) This section does not authorize the employment of a person in violation of Section 12515.

(h) This section shall become operative on September 20, 2005.

SEC. 4. Section 12517 of the Vehicle Code is amended to read:

12517. (a) A person may not operate a schoolbus unless that person has in his or her immediate possession a valid driver's license for the appropriate class of vehicle to be driven endorsed for schoolbus and passenger transportation. When transporting one or more pupils at or below the 12th-grade level to or from a public or private school or to or from public or private school activities, the person shall have in his or her immediate possession a certificate issued by the department to permit the operation of a schoolbus.

(b) A person may not operate a school pupil activity bus unless that person has in his or her immediate possession a valid driver's license for the appropriate class of vehicle to be driven endorsed for passenger transportation. When transporting one or more pupils at or below the 12th-grade level to or from public or private school activities, the person shall also have in his or her immediate possession a certificate issued by the department to permit the operation of school pupil activity buses.

(c) The applicant for a certificate to operate a schoolbus or school pupil activity bus shall meet the eligibility and training requirements specified for schoolbus and school pupil activity busdrivers in this code, the Education Code, and regulations adopted by the Department of the California Highway Patrol, and, in addition to the fee authorized in Section 2427, shall pay a fee of twenty-five dollars ($25) with the application for issuance of an original certificate, and a fee of twelve dollars ($12) for the renewal of that certificate.

(d) A person holding a valid certificate to permit the operation of a schoolbus or school pupil activity bus, issued prior to January 1, 1991, is not required to reapply for a certificate to satisfy any additional requirements imposed by Chapter 1360 of the Statutes of 1990 until the certificate he or she holds expires or is canceled or revoked.

(e) This section shall become operative on September 20, 2005.

SEC. 5. Section 12517.4 of the Vehicle Code is amended to read:

12517.4. This section governs the issuance of a certificate to drive a schoolbus, school pupil activity bus, youth bus, general public paratransit vehicle, or farm labor vehicle.

(a) The driver certificate shall be issued only to applicants meeting all applicable provisions of this code and passing the examinations prescribed by the department and the Department of the California Highway Patrol. The examinations shall be conducted by the Department of the California Highway Patrol, pursuant to Sections 12517, 12519, 12522, 12523, and 12523.5.

(b) A temporary driver certificate shall be issued by the Department of the California Highway Patrol after an applicant has cleared a criminal history background check by the Department of Justice and, if

applicable, the Federal Bureau of Investigation, and has passed the examinations and meets all other applicable provisions of this code.

(c) A permanent driver's certificate shall be issued by the department after an applicant has passed all tests and met all applicable provisions of this code. Certificates are valid for a maximum of five years and shall expire on the fifth birthday following the issuance of an original certificate or the expiration of the certificate renewed.

(d) A holder of a certificate may not violate any restriction placed on the certificate. Depending upon the type of vehicle used in the driving test and the abilities and physical condition of the applicant, the Department of the California Highway Patrol and the department may place restrictions on a certificate to assure the safe operation of a motor vehicle and safe transportation of passengers. These restrictions may include, but are not limited to, all of the following:

(1) Automatic transmission only.

(2) Hydraulic brakes only.

(3) Type 2 bus only.

(4) Conventional or type 2 bus only.

(5) Two-axle motor truck or passenger vehicle only.

(e) A holder of a certificate may not drive a motor vehicle equipped with a two-speed rear axle unless the certificate is endorsed: ''May drive vehicle with two-speed rear axle.''

(f) This section shall become operative on September 20, 2005.

SEC. 6. Section 12804.9 of the Vehicle Code is amended to read:

12804.9. (a) (1) The examination shall include all of the following:

(A) A test of the applicant's knowledge and understanding of the provisions of this code governing the operation of vehicles upon the highways.

(B) A test of the applicant's ability to read and understand simple English used in highway traffic and directional signs.

(C) A test of the applicant's understanding of traffic signs and signals, including the bikeway signs, markers, and traffic control devices established by the Department of Transportation.

(D) An actual demonstration of the applicant's ability to exercise ordinary and reasonable control in operating a motor vehicle by driving it under the supervision of an examining officer. The applicant shall submit to an examination appropriate to the type of motor vehicle or combination of vehicles he or she desires a license to drive, except that the department may waive the driving test part of the examination for any applicant who submits a license issued by another state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico if the department verifies through any acknowledged national driver record data source that there are no stops,

holds, or other impediments to its issuance. The examining officer may request to see evidence of financial responsibility for the vehicle prior to supervising the demonstration of the applicant's ability to operate the vehicle. The examining officer may refuse to examine an applicant who is unable to provide proof of financial responsibility for the vehicle, unless proof of financial responsibility is not required by this code.

(E) A test of the hearing and eyesight of the applicant, and of other matters that may be necessary to determine the applicant's mental and physical fitness to operate a motor vehicle upon the highways, and whether any grounds exist for refusal of a license under this code.

(2) The examination for a class A or class B license under subdivision (b) shall also include a report of a medical examination of the applicant given not more than two years prior to the date of the application by a health care professional. As used in this subdivision, ''health care professional'' means a person who is licensed, certified, or registered in accordance with applicable state laws and regulations to practice medicine and perform physical examinations in the United States of America. Health care professionals are doctors of medicine, doctors of osteopathy, physician assistants, and advanced practice nurses, or doctors of chiropractic who are clinically competent to perform the medical examination presently required of motor carrier drivers by the Federal Highway Administration. The report shall be on a form approved by the department, the Federal Highway Administration, or the Federal Aviation Administration. In establishing the requirements, consideration may be given to the standards presently required of motor carrier drivers by the Federal Highway Administration.

(3) Any physical defect of the applicant, that, in the opinion of the department, is compensated for to ensure safe driving ability, shall not prevent the issuance of a license to the applicant.

(b) In accordance with the following classifications, an applicant for a driver's license shall be required to submit to an examination appropriate to the type of motor vehicle or combination of vehicles the applicant desires a license to drive:

(1) Class A includes the following:

(A) A combination of vehicles, if any vehicle being towed has a gross vehicle weight rating of more than 10,000 pounds.

(B) A vehicle towing more than one vehicle.

(C) A trailer bus.

(D) The operation of all vehicles under class B and class C.

(2) Class B includes the following:

(A) A single vehicle with a gross vehicle weight rating of more than 26,000 pounds.

(B) A single vehicle with three or more axles, except any three-axle vehicle weighing less than 6,000 pounds.

(C) A bus except a trailer bus.

(D) A farm labor vehicle.

(E) A single vehicle with three or more axles or a gross vehicle weight rating of more than 26,000 pounds towing another vehicle with a gross vehicle weight rating of 10,000 pounds or less.

(F) A house car over 40 feet in length, excluding safety devices and safety bumpers.

(G) The operation of all vehicles covered under class C.

(3) Class C includes the following:

(A) A two-axle vehicle with a gross vehicle weight rating of 26,000 pounds or less, including when the vehicle is towing a trailer or semitrailer with a gross vehicle weight rating of 10,000 pounds or less.

(B) Notwithstanding subparagraph (A), a two-axle vehicle weighing 4,000 pounds or more unladen when towing a trailer coach not exceeding 9,000 pounds gross.

(C) A house car of 40 feet in length or less.

(D) A three-axle vehicle weighing 6,000 pounds or less gross.

(E) A house car of 40 feet in length or less or vehicle towing another vehicle with a gross vehicle weight rating of 10,000 pounds or less, including when a tow dolly is used. A vehicle shall not tow another vehicle in violation of Section 21715.

(F) (i) A two-axle vehicle weighing 4,000 pounds or more unladen when towing either a trailer coach or a fifth-wheel travel trailer not exceeding 10,000 pounds gross vehicle weight rating, when the towing of the trailer is not for compensation.

(ii) A two-axle vehicle weighing 4,000 pounds or more unladen when towing a fifth-wheel travel trailer exceeding 10,000 pounds, but not exceeding 15,000 pounds, gross vehicle weight rating, when the towing of the trailer is not for compensation, and if the person has passed a specialized written examination provided by the department relating to the knowledge of this code and other safety aspects governing the towing of recreational vehicles upon the highway.

The authority to operate combinations of vehicles under this subparagraph shall be granted by endorsement on a class C license upon completion of that written examination.

(G) A vehicle or combination of vehicles with a gross combination weight rating or a gross vehicle weight rating, as those terms are defined in subdivisions (j) and (k), respectively, of Section 15210, of 26,000 pounds or less, if all of the following conditions are met:

(i) Is operated by a farmer, an employee of a farmer, or an instructor credentialed in agriculture as part of an instructional program in agriculture at the high school, community college, or university level.

(ii) Is used exclusively in the conduct of agricultural operations.

(iii) Is not used in the capacity of a for-hire carrier or for compensation.

(H) Class C does not include any two-wheel motorcycle or any two-wheel motor-driven cycle.

(4) Class M1. A two-wheel motorcycle or motor-driven cycle. Authority to operate vehicles included in a class M1 license may be granted by endorsement on a class A, B, or C license upon completion of an appropriate examination.

(5) Class M2. A motorized bicycle or moped, or any bicycle with an attached motor, except a motorized bicycle described in subdivision (b) of Section 406 and a motorized scooter described in Section 407.5. Authority to operate vehicles included in class M2 may be granted by endorsement on a class A, B, or C license upon completion of an appropriate examination. Persons holding a class M1 license or endorsement may operate vehicles included in class M2 without further examination.

(c) A driver's license or driver certificate shall not be valid for operating a commercial motor vehicle, as defined in subdivision (b) of Section 15210, any other motor vehicle defined in paragraph (1) or (2) of subdivision (b), or any other vehicle requiring a driver to hold any driver certificate or any driver's license endorsement under Section 15275, unless a medical certificate approved by the department, the Federal Highway Administration, or the Federal Aviation Administration, that has been issued within two years of the date of the operation of that vehicle, is within the licensee's immediate possession, and a copy of the medical examination report from which the certificate was issued is on file with the department. Otherwise, the license shall be valid only for operating class C vehicles that are not commercial vehicles, as defined in subdivision (b) of Section 15210, and for operating class M1 or M2 vehicles, if so endorsed, that are not commercial vehicles, as defined in subdivision (b) of Section 15210.

(d) A license or driver certificate issued prior to the enactment of Chapter 7 (commencing with Section 15200) shall be valid to operate the class or type of vehicles specified under the law in existence prior to that enactment until the license or certificate expires or is otherwise suspended, revoked, or canceled.

(e) The department may accept a certificate of driving skill that is issued by an employer, authorized by the department to issue a certificate under Section 15250, of the applicant, in lieu of a driving test, on class A or B applications, if the applicant has first qualified for a class C license and has met the other examination requirements for the license for which he or she is applying. The certificate may be submitted as evidence of the applicant's skill in the operation of the types of equipment covered by the license for which he or she is applying.

(f) The department may accept a certificate of competence in lieu of a driving test on class M1 or M2 applications, when the certificate is issued by a law enforcement agency for its officers who operate class M1 or M2 vehicles in their duties, if the applicant has met the other examination requirements for the license for which he or she is applying.

(g) The department may accept a certificate of satisfactory completion of a novice motorcyclist training program approved by the commissioner pursuant to Section 2932 in lieu of a driving test on class M1 or M2 applications, if the applicant has met the other examination requirements for the license for which he or she is applying. The department shall review and approve the written and driving test used by a program to determine whether the program may issue a certificate of completion.

(h) Notwithstanding subdivision (b), a person holding a valid California driver's license of any class may operate a short-term rental motorized bicycle without taking any special examination for the operation of a motorized bicycle, and without having a class M2 endorsement on that license. As used in this paragraph, ''short-term'' means 48 hours or less.

(i) A person under the age of 21 years shall not be issued a class M1 or M2 license or endorsement unless he or she provides evidence satisfactory to the department of completion of a motorcycle safety training program that is operated pursuant to Article 2 (commencing with Section 2930) of Chapter 5 of Division 2.

(j) Drivers of vanpool vehicles may operate with class C licenses but shall possess evidence of a medical examination required for a class B license when operating vanpool vehicles. In order to be eligible to drive the vanpool vehicle, the driver shall keep in the vanpool vehicle a statement, signed under penalty of perjury, that he or she has not been convicted of reckless driving, drunk driving, or a hit-and-run offense in the last five years.

(k) A class M license issued between January 1, 1989, and December 31, 1992, shall permit the holder to operate any motorcycle, motor-driven cycle, or motorized bicycle until the expiration of the license.

(*l*) This section shall become operative on September 20, 2005.

SEC. 6.3. Section 12804.9 of the Vehicle Code is amended to read:

12804.9. (a) (1) The examination shall include all of the following:

(A) A test of the applicant's knowledge and understanding of the provisions of this code governing the operation of vehicles upon the highways.

(B) A test of the applicant's ability to read and understand simple English used in highway traffic and directional signs.

(C) A test of the applicant's understanding of traffic signs and signals, including the bikeway signs, markers, and traffic control devices established by the Department of Transportation.

(D) An actual demonstration of the applicant's ability to exercise ordinary and reasonable control in operating a motor vehicle by driving it under the supervision of an examining officer. The applicant shall submit to an examination appropriate to the type of motor vehicle or combination of vehicles he or she desires a license to drive, except that the department may waive the driving test part of the examination for any applicant who submits a license issued by another state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico if the department verifies through any acknowledged national driver record data source that there are no stops, holds, or other impediments to its issuance. The examining officer may request to see evidence of financial responsibility for the vehicle prior to supervising the demonstration of the applicant's ability to operate the vehicle. The examining officer may refuse to examine an applicant who is unable to provide proof of financial responsibility for the vehicle, unless proof of financial responsibility is not required by this code.

(E) A test of the hearing and eyesight of the applicant, and of other matters that may be necessary to determine the applicant's mental and physical fitness to operate a motor vehicle upon the highways, and whether any grounds exist for refusal of a license under this code.

(2) The examination for a class A or class B driver's license under subdivision (b) shall also include a report of a medical examination of the applicant given not more than two years prior to the date of the application by a health care professional. As used in this subdivision, ''health care professional'' means a person who is licensed, certified, or registered in accordance with applicable state laws and regulations to practice medicine and perform physical examinations in the United States of America. Health care professionals are doctors of medicine, doctors of osteopathy, physician assistants, and registered advanced practice nurses, or doctors of chiropractic who are clinically competent to perform the medical examination presently required of motor carrier drivers by the Federal Highway Administration. The report shall be on a form approved by the department, the Federal Highway Administration, or the Federal Aviation Administration. In establishing the requirements, consideration may be given to the standards presently required of motor carrier drivers by the Federal Highway Administration.

(3) Any physical defect of the applicant, that, in the opinion of the department, is compensated for to ensure safe driving ability, shall not prevent the issuance of a license to the applicant.

(b) In accordance with the following classifications, any applicant for a driver's license shall be required to submit to an examination appropriate to the type of motor vehicle or combination of vehicles the applicant desires a license to drive:

(1) Class A includes the following:

(A) A combination of vehicles, if any vehicle being towed has a gross vehicle weight rating of more than 10,000 pounds.

(B) A vehicle towing more than one vehicle.

(C) A trailer bus.

(D) The operation of all vehicles under class B and class C.

(2) Class B includes the following:

(A) A single vehicle with a gross vehicle weight rating of more than 26,000 pounds.

(B) A single vehicle with three or more axles, except any three-axle vehicle weighing less than 6,000 pounds.

(C) A bus except a trailer bus.

(D) A farm labor vehicle.

(E) A single vehicle with three or more axles or a gross vehicle weight rating of more than 26,000 pounds towing another vehicle with a gross vehicle weight rating of 10,000 pounds or less.

(F) A house car over 40 feet in length, excluding safety devices and safety bumpers.

(G) The operation of all vehicles covered under class C.

(3) Class C includes the following:

(A) A two-axle vehicle with a gross vehicle weight rating of 26,000 pounds or less, including when the vehicle is towing a trailer or semitrailer with a gross vehicle weight rating of 10,000 pounds or less.

(B) Notwithstanding subparagraph (A), a two-axle vehicle weighing 4,000 pounds or more unladen when towing a trailer coach not exceeding 9,000 pounds gross.

(C) A house car of 40 feet in length or less.

(D) A three-axle vehicle weighing 6,000 pounds gross or less.

(E) A house car of 40 feet in length or less or vehicle towing another vehicle with a gross vehicle weight rating of 10,000 pounds or less, including when a tow dolly is used. A person driving a vehicle may not tow another vehicle in violation of Section 21715.

(F) (i) A two-axle vehicle weighing 4,000 pounds or more unladen when towing either a trailer coach or a fifth-wheel travel trailer not exceeding 10,000 pounds gross vehicle weight rating, when the towing of the trailer is not for compensation.

(ii) A two-axle vehicle weighing 4,000 pounds or more unladen when towing a fifth-wheel travel trailer exceeding 10,000 pounds, but not exceeding 15,000 pounds, gross vehicle weight rating, when the towing of the trailer is not for compensation, and if the person has passed a

specialized written examination provided by the department relating to the knowledge of this code and other safety aspects governing the towing of recreational vehicles upon the highway.

The authority to operate combinations of vehicles under this subparagraph may be granted by endorsement on a class C license upon completion of that written examination.

(G) A vehicle or combination of vehicles with a gross combination weight rating or a gross vehicle weight rating, as those terms are defined in subdivisions (g) and (h), respectively, of Section 15210, of 26,000 pounds or less, if all of the following conditions are met:

(i) Is operated by a farmer, an employee of a farmer, or an instructor credentialed in agriculture as part of an instructional program in agriculture at the high school, community college, or university level.

(ii) Is used exclusively in the conduct of agricultural operations.

(iii) Is not used in the capacity of a for-hire carrier or for compensation.

(H) A motorized scooter.

(I) Class C does not include a two-wheel motorcycle or a two-wheel motor-driven cycle.

(4) Class M1. A two-wheel motorcycle or a motor-driven cycle. Authority to operate a vehicle included in a class M1 license may be granted by endorsement on a class A, B, or C license upon completion of an appropriate examination.

(5) Class M2. A motorized bicycle or moped, or a bicycle with an attached motor, except a motorized bicycle described in subdivision (b) of Section 406. Authority to operate vehicles included in class M2 may be granted by endorsement on a class A, B, or C license upon completion of an appropriate examination. Persons holding a class M1 license or endorsement may operate vehicles included in class M2 without further examination.

(c) A driver's license or driver certificate is not valid for operating a commercial motor vehicle, as defined in subdivision (b) of Section 15210, any other motor vehicle defined in paragraph (1) or (2) of subdivision (b), or any other vehicle requiring a driver to hold any driver certificate or any driver's license endorsement under Section 15275, unless a medical certificate approved by the department, the Federal Highway Administration, or the Federal Aviation Administration, that has been issued within two years of the date of the operation of that vehicle, is within the licensee's immediate possession, and a copy of the medical examination report from which the certificate was issued is on file with the department. Otherwise, the license is valid only for operating class C vehicles that are not commercial vehicles, as defined in subdivision (b) of Section 15210, and for operating class M1 or M2

vehicles, if so endorsed, that are not commercial vehicles, as defined in subdivision (b) of Section 15210.

(d) A license or driver certificate issued prior to the enactment of Chapter 7 (commencing with Section 15200) is valid to operate the class or type of vehicles specified under the law in existence prior to that enactment until the license or certificate expires or is otherwise suspended, revoked, or canceled.

(e) The department may accept a certificate of driving skill that is issued by an employer, authorized by the department to issue a certificate under Section 15250, of the applicant, in lieu of a driving test, on class A or B applications, if the applicant has first qualified for a class C license and has met the other examination requirements for the license for which he or she is applying. The certificate may be submitted as evidence of the applicant's skill in the operation of the types of equipment covered by the license for which he or she is applying.

(f) The department may accept a certificate of competence in lieu of a driving test on class M1 or M2 applications, when the certificate is issued by a law enforcement agency for its officers who operate class M1 or M2 vehicles in their duties, if the applicant has met the other examination requirements for the license for which he or she is applying.

(g) The department may accept a certificate of satisfactory completion of a novice motorcyclist training program approved by the commissioner pursuant to Section 2932 in lieu of a driving test on class M1 or M2 applications, if the applicant has met the other examination requirements for the license for which he or she is applying. The department shall review and approve the written and driving test used by a program to determine whether the program may issue a certificate of completion.

(h) Notwithstanding subdivision (b), a person holding a valid California driver's license of any class may operate a short-term rental motorized bicycle without taking any special examination for the operation of a motorized bicycle, and without having a class M2 endorsement on that license. As used in this subdivision, ''short-term'' means 48 hours or less.

(i) A person under the age of 21 years may not be issued a class M1 or M2 license or endorsement unless he or she provides evidence satisfactory to the department of completion of a motorcycle safety training program that is operated pursuant to Article 2 (commencing with Section 2930) of Chapter 5 of Division 2.

(j) A driver of a vanpool vehicle may operate with class C licenses but shall possess evidence of a medical examination required for a class B license when operating vanpool vehicles. In order to be eligible to drive the vanpool vehicle, the driver shall keep in the vanpool vehicle a statement, signed under penalty of perjury, that he or she has not been

convicted of reckless driving, drunk driving, or a hit-and-run offense in the last five years.

(k) A class M license issued between January 1, 1989, and December 31, 1992, shall permit the holder to operate any motorcycle, motor-driven cycle, or motorized bicycle until the expiration of the license.

(*l*) This section shall become inoperative on September 20, 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 that date.

SEC. 6.5. Section 12804.9 is added to the Vehicle Code, to read:

12804.9. (a) (1) The examination shall include all of the following:

(A) A test of the applicant's knowledge and understanding of the provisions of this code governing the operation of vehicles upon the highways.

(B) A test of the applicant's ability to read and understand simple English used in highway traffic and directional signs.

(C) A test of the applicant's understanding of traffic signs and signals, including the bikeway signs, markers, and traffic control devices established by the Department of Transportation.

(D) An actual demonstration of the applicant's ability to exercise ordinary and reasonable control in operating a motor vehicle by driving it under the supervision of an examining officer. The applicant shall submit to an examination appropriate to the type of motor vehicle or combination of vehicles he or she desires a license to drive, except that the department may waive the driving test part of the examination for any applicant who submits a license issued by another state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico if the department verifies through any acknowledged national driver record data source that there are no stops, holds, or other impediments to its issuance. The examining officer may request to see evidence of financial responsibility for the vehicle prior to supervising the demonstration of the applicant's ability to operate the vehicle. The examining officer may refuse to examine an applicant who is unable to provide proof of financial responsibility for the vehicle, unless proof of financial responsibility is not required by this code.

(E) A test of the hearing and eyesight of the applicant, and of other matters that may be necessary to determine the applicant's mental and physical fitness to operate a motor vehicle upon the highways, and whether any grounds exist for refusal of a license under this code.

(2) The examination for a class A or class B driver's license under subdivision (b) shall also include a report of a medical examination of the applicant given not more than two years prior to the date of the

application by a health care professional. As used in this subdivision, ''health care professional'' means a person who is licensed, certified, or registered in accordance with applicable state laws and regulations to practice medicine and perform physical examinations in the United States of America. Health care professionals are doctors of medicine, doctors of osteopathy, physician assistants, and registered advanced practice nurses, or doctors of chiropractic who are clinically competent to perform the medical examination presently required of motor carrier drivers by the Federal Highway Administration. The report shall be on a form approved by the department, the Federal Highway Administration, or the Federal Aviation Administration. In establishing the requirements, consideration may be given to the standards presently required of motor carrier drivers by the Federal Highway Administration.

(3) Any physical defect of the applicant, that, in the opinion of the department, is compensated for to ensure safe driving ability, shall not prevent the issuance of a license to the applicant.

(b) In accordance with the following classifications, any applicant for a driver's license shall be required to submit to an examination appropriate to the type of motor vehicle or combination of vehicles the applicant desires a license to drive:

(1) Class A includes the following:

(A) A combination of vehicles, if any vehicle being towed has a gross vehicle weight rating of more than 10,000 pounds.

(B) A vehicle towing more than one vehicle.

(C) A trailer bus.

(D) The operation of all vehicles under class B and class C.

(2) Class B includes the following:

(A) A single vehicle with a gross vehicle weight rating of more than 26,000 pounds.

(B) A single vehicle with three or more axles, except any three-axle vehicle weighing less than 6,000 pounds.

(C) A bus except a trailer bus.

(D) A farm labor vehicle.

(E) A single vehicle with three or more axles or a gross vehicle weight rating of more than 26,000 pounds towing another vehicle with a gross vehicle weight rating of 10,000 pounds or less.

(F) A house car over 40 feet in length, excluding safety devices and safety bumpers.

(G) The operation of all vehicles covered under class C.

(3) Class C includes the following:

(A) A two-axle vehicle with a gross vehicle weight rating of 26,000 pounds or less, including when the vehicle is towing a trailer or semitrailer with a gross vehicle weight rating of 10,000 pounds or less.

(B) Notwithstanding subparagraph (A), a two-axle vehicle weighing 4,000 pounds or more unladen when towing a trailer coach not exceeding 9,000 pounds gross.

(C) A house car of 40 feet in length or less.

(D) A three-axle vehicle weighing 6,000 pounds gross or less.

(E) A house car of 40 feet in length or less or vehicle towing another vehicle with a gross vehicle weight rating of 10,000 pounds or less, including when a tow dolly is used. A person driving a vehicle may not tow another vehicle in violation of Section 21715.

(F) (i) A two-axle vehicle weighing 4,000 pounds or more unladen when towing either a trailer coach or a fifth-wheel travel trailer not exceeding 10,000 pounds gross vehicle weight rating, when the towing of the trailer is not for compensation.

(ii) A two-axle vehicle weighing 4,000 pounds or more unladen when towing a fifth-wheel travel trailer exceeding 10,000 pounds, but not exceeding 15,000 pounds, gross vehicle weight rating, when the towing of the trailer is not for compensation, and if the person has passed a specialized written examination provided by the department relating to the knowledge of this code and other safety aspects governing the towing of recreational vehicles upon the highway.

The authority to operate combinations of vehicles under this subparagraph may be granted by endorsement on a class C license upon completion of that written examination.

(G) A vehicle or combination of vehicles with a gross combination weight rating or a gross vehicle weight rating, as those terms are defined in subdivisions (j) and (k), respectively, of Section 15210, of 26,000 pounds or less, if all of the following conditions are met:

(i) Is operated by a farmer, an employee of a farmer, or an instructor credentialed in agriculture as part of an instructional program in agriculture at the high school, community college, or university level.

(ii) Is used exclusively in the conduct of agricultural operations.

(iii) Is not used in the capacity of a for-hire carrier or for compensation.

(H) A motorized scooter.

(I) Class C does not include a two-wheel motorcycle or a two-wheel motor-driven cycle.

(4) Class M1. A two-wheel motorcycle or a motor-driven cycle. Authority to operate a vehicle included in a class M1 license may be granted by endorsement on a class A, B, or C license upon completion of an appropriate examination.

(5) Class M2. A motorized bicycle or moped, or a bicycle with an attached motor, except a motorized bicycle described in subdivision (b) of Section 406. Authority to operate vehicles included in class M2 may be granted by endorsement on a class A, B, or C license upon completion

of an appropriate examination. Persons holding a class M1 license or endorsement may operate vehicles included in class M2 without further examination.

(c) A driver's license or driver certificate is not valid for operating a commercial motor vehicle, as defined in subdivision (b) of Section 15210, any other motor vehicle defined in paragraph (1) or (2) of subdivision (b), or any other vehicle requiring a driver to hold any driver certificate or any driver's license endorsement under Section 15275, unless a medical certificate approved by the department, the Federal Highway Administration, or the Federal Aviation Administration, that has been issued within two years of the date of the operation of that vehicle, is within the licensee's immediate possession, and a copy of the medical examination report from which the certificate was issued is on file with the department. Otherwise, the license is valid only for operating class C vehicles that are not commercial vehicles, as defined in subdivision (b) of Section 15210, and for operating class M1 or M2 vehicles, if so endorsed, that are not commercial vehicles, as defined in subdivision (b) of Section 15210.

(d) A license or driver certificate issued prior to the enactment of Chapter 7 (commencing with Section 15200) is valid to operate the class or type of vehicles specified under the law in existence prior to that enactment until the license or certificate expires or is otherwise suspended, revoked, or canceled.

(e) The department may accept a certificate of driving skill that is issued by an employer, authorized by the department to issue a certificate under Section 15250, of the applicant, in lieu of a driving test, on class A or B applications, if the applicant has first qualified for a class C license and has met the other examination requirements for the license for which he or she is applying. The certificate may be submitted as evidence of the applicant's skill in the operation of the types of equipment covered by the license for which he or she is applying.

(f) The department may accept a certificate of competence in lieu of a driving test on class M1 or M2 applications, when the certificate is issued by a law enforcement agency for its officers who operate class M1 or M2 vehicles in their duties, if the applicant has met the other examination requirements for the license for which he or she is applying.

(g) The department may accept a certificate of satisfactory completion of a novice motorcyclist training program approved by the commissioner pursuant to Section 2932 in lieu of a driving test on class M1 or M2 applications, if the applicant has met the other examination requirements for the license for which he or she is applying. The department shall review and approve the written and driving test used by a program to determine whether the program may issue a certificate of completion.

(h) Notwithstanding subdivision (b), a person holding a valid California driver's license of any class may operate a short-term rental motorized bicycle without taking any special examination for the operation of a motorized bicycle, and without having a class M2 endorsement on that license. As used in this subdivision, ''short-term'' means 48 hours or less.

(i) A person under the age of 21 years may not be issued a class M1 or M2 license or endorsement unless he or she provides evidence satisfactory to the department of completion of a motorcycle safety training program that is operated pursuant to Article 2 (commencing with Section 2930) of Chapter 5 of Division 2.

(j) A driver of a vanpool vehicle may operate with class C licenses but shall possess evidence of a medical examination required for a class B license when operating vanpool vehicles. In order to be eligible to drive the vanpool vehicle, the driver shall keep in the vanpool vehicle a statement, signed under penalty of perjury, that he or she has not been convicted of reckless driving, drunk driving, or a hit-and-run offense in the last five years.

(k) A class M license issued between January 1, 1989, and December 31, 1992, shall permit the holder to operate any motorcycle, motor-driven cycle, or motorized bicycle until the expiration of the license.

(*l*) This section shall become operative on September 20, 2005.

SEC. 7. Section 13353 of the Vehicle Code is amended to read:

13353. (a) If a person refuses the officer's request to submit to, or fails to complete, a chemical test or tests pursuant to Section 23612, upon receipt of the officer's sworn statement that the officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23140, 23152, or 23153, and that the person had refused to submit to, or did not complete, the test or tests after being requested by the officer, the department shall do one of the following:

(1) Suspend the person's privilege to operate a motor vehicle for a period of one year.

(2) Revoke the person's privilege to operate a motor vehicle for a period of two years if the refusal occurred within seven years of either (A) a separate violation of Section 23103 as specified in Section 23103.5, or of Section 23140, 23152, or 23153, or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, that resulted in a conviction, or (B) a suspension or revocation of the person's privilege to operate a motor vehicle pursuant to this section or Section 13353.2 for an offense which occurred on a separate occasion.

(3) Revoke the person's privilege to operate a motor vehicle for a period of three years if the refusal occurred within seven years of any of the following:

(A) Two or more separate violations of Section 23103 as specified in Section 23103.5, or of Section 23140, 23152, or 23153, or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, or any combination thereof, which resulted in convictions.

(B) Two or more suspensions or revocations of the person's privilege to operate a motor vehicle pursuant to this section or Section 13353.2 for offenses that occurred on separate occasions.

(C) Any combination of two or more of those convictions or administrative suspensions or revocations.

The officer's sworn statement shall be submitted pursuant to Section 13380 on a form furnished or approved by the department. The suspension or revocation shall not become effective until 30 days after the giving of written notice thereof, or until the end of any stay of the suspension or revocation, as provided for in Section 13558.

(D) For purposes of this section, a conviction of any offense in any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or Canada that, if committed in this state, would be a violation of Section 23103, as specified in Section 23103.5, or Section 23140, 23152, or 23153, or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, is a conviction of that particular section of the Vehicle or Penal Code.

(b) If a person on more than one occasion in separate incidents refuses the officer's request to submit to or fails to complete, a chemical test or tests pursuant to Section 23612 while driving a motor vehicle, upon receipt of the officer's sworn statement that the officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23140, 23152, or 23153, the department shall disqualify the person from operating a commercial motor vehicle for the rest of his or her life.

(c) The notice of the order of suspension or revocation under this section shall be served on the person by a peace officer pursuant to Section 23612. The notice of the order of suspension or revocation shall be on a form provided by the department. If the notice of the order of suspension or revocation has not been served by the peace officer pursuant to Section 23612, the department immediately shall notify the person in writing of the action taken. The peace officer who serves the notice, or the department, if applicable, also shall provide, if the officer or department, as the case may be, determines that it is necessary to do so, the person with the appropriate non-English notice developed pursuant to subdivision (d) of Section 14100.

(d) Upon receipt of the officer's sworn statement, the department shall review the record. For purposes of this section, the scope of the administrative review shall cover all of the following issues:

(1) Whether the peace officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23140, 23152, or 23153.

(2) Whether the person was placed under arrest.

(3) Whether the person refused to submit to, or did not complete, the test or tests after being requested by a peace officer.

(4) Whether, except for the persons described in subdivision (a) of Section 23612 who are incapable of refusing, the person had been told that his or her driving privilege would be suspended or revoked if he or she refused to submit to, or did not complete, the test or tests.

(e) The person may request an administrative hearing pursuant to Section 13558. Except as provided in subdivision (e) of Section 13558, the request for an administrative hearing does not stay the order of suspension or revocation.

(f) This section shall become operative on September 20, 2005.

SEC. 7.1. Section 13353 of the Vehicle Code is amended to read:

13353. (a) If a person refuses the officer's request to submit to, or fails to complete, a chemical test or tests pursuant to Section 23612, upon the receipt of the officer's sworn statement that the officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23140, 23152, or 23153, and that the person had refused to submit to, or did not complete, the test or tests after being requested by the officer, the department shall do one of the following:

(1) Suspend the person's privilege to operate a motor vehicle for a period of one year.

(2) Revoke the person's privilege to operate a motor vehicle for a period of two years if the refusal occurred within 10 years of either (A) a separate violation of Section 23103 as specified in Section 23103.5, or of Section 23140, 23152, or 23153, or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, that resulted in a conviction, or (B) a suspension or revocation of the person's privilege to operate a motor vehicle pursuant to this section or Section 13353.2 for an offense that occurred on a separate occasion.

(3) Revoke the person's privilege to operate a motor vehicle for a period of three years if the refusal occurred within 10 years of any of the following:

(A) Two or more separate violations of Section 23103 as specified in Section 23103.5, or of Section 23140, 23152, or 23153, or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, or any combination thereof, that resulted in convictions.

(B) Two or more suspensions or revocations of the person's privilege to operate a motor vehicle pursuant to this section or Section 13353.2 for offenses which occurred on separate occasions.

(C) Any combination of two or more of those convictions or administrative suspensions or revocations.

The officer's sworn statement shall be submitted pursuant to Section 13380 on a form furnished or approved by the department. The suspension or revocation shall not become effective until 30 days after the giving of written notice thereof, or until the end of any stay of the suspension or revocation, as provided for in Section 13558.

(D) For the purposes of this section, a conviction of any offense in any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or Canada that, if committed in this state, would be a violation of Section 23103, as specified in Section 23103.5, or Section 23140, 23152, or 23153, or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, is a conviction of that particular section of the Vehicle or Penal Code.

(b) The notice of the order of suspension or revocation under this section shall be served on the person by a peace officer pursuant to Section 23612. The notice of the order of suspension or revocation shall be on a form provided by the department. If the notice of the order of suspension or revocation has not been served by the peace officer pursuant to Section 23612, the department immediately shall notify the person in writing of the action taken. The peace officer who serves the notice, or the department, if applicable, also shall provide, if the officer or department, as the case may be, determines that it is necessary to do so, the person with the appropriate non-English notice developed pursuant to subdivision (d) of Section 14100.

(c) Upon the receipt of the officer's sworn statement, the department shall review the record. For the purposes of this section, the scope of the administrative review shall cover all of the following issues:

(1) Whether the peace officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23140, 23152, or 23153.

(2) Whether the person was placed under arrest.

(3) Whether the person refused to submit to, or did not complete, the test or tests after being requested by a peace officer.

(4) Whether, except for a person described in subdivision (a) of Section 23612 who is incapable of refusing, the person had been told that his or her driving privilege would be suspended or revoked if he or she refused to submit to, or did not complete, the test or tests.

(d) The person may request an administrative hearing pursuant to Section 13558. Except as provided in subdivision (e) of Section 13558, the request for an administrative hearing does not stay the order of suspension or revocation.

(e) This section shall become inoperative on September 20, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2006, deletes the dates on which it becomes inoperative and is repealed.

SEC. 7.2. Section 13353 is added to the Vehicle Code, to read:

13353. (a) If a person refuses the officer's request to submit to, or fails to complete, a chemical test or tests pursuant to Section 23612, upon the receipt of the officer's sworn statement that the officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23140, 23152, or 23153, and that the person had refused to submit to, or did not complete, the test or tests after being requested by the officer, the department shall do one of the following:

(1) Suspend the person's privilege to operate a motor vehicle for a period of one year.

(2) Revoke the person's privilege to operate a motor vehicle for a period of two years if the refusal occurred within 10 years of either (A) a separate violation of Section 23103 as specified in Section 23103.5, or of Section 23140, 23152, or 23153, or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, that resulted in a conviction, or (B) a suspension or revocation of the person's privilege to operate a motor vehicle pursuant to this section or Section 13353.2 for an offense that occurred on a separate occasion.

(3) Revoke the person's privilege to operate a motor vehicle for a period of three years if the refusal occurred within 10 years of any of the following:

(A) Two or more separate violations of Section 23103 as specified in Section 23103.5, or of Section 23140, 23152, or 23153, or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, or any combination thereof, that resulted in convictions.

(B) Two or more suspensions or revocations of the person's privilege to operate a motor vehicle pursuant to this section or Section 13353.2 for offenses that occurred on separate occasions.

(C) Any combination of two or more of those convictions or administrative suspensions or revocations.

The officer's sworn statement shall be submitted pursuant to Section 13380 on a form furnished or approved by the department. The suspension or revocation shall not become effective until 30 days after the giving of written notice thereof, or until the end of any stay of the suspension or revocation, as provided for in Section 13558.

(D) For the purposes of this section, a conviction of any offense in any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or Canada that, if committed in this state, would be a violation of Section 23103, as specified in Section 23103.5, or Section 23140, 23152, or 23153, or

Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, is a conviction of that particular section of the Vehicle or Penal Code.

(b) If a person on more than one occasion in separate incidents refuses the officer's request to submit to, or fails to complete, a chemical test or tests pursuant to Section 23612 while driving a motor vehicle, upon receipt of the officer's sworn statement that the officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 21340, 23152, or 25153, the department shall disqualify the person from operating a commercial vehicle for the rest of his or her lifetime.

(c) The notice of the order of suspension or revocation under this section shall be served on the person by a peace officer pursuant to Section 23612. The notice of the order of suspension or revocation shall be on a form provided by the department. If the notice of the order of suspension or revocation has not been served by the peace officer pursuant to Section 23612, the department immediately shall notify the person in writing of the action taken. The peace officer who serves the notice, or the department, if applicable, also shall provide, if the officer or department, as the case may be, determines that it is necessary to do so, the person with the appropriate non-English notice developed pursuant to subdivision (d) of Section 14100.

(d) Upon the receipt of the officer's sworn statement, the department shall review the record. For the purposes of this section, the scope of the administrative review shall cover all of the following issues:

(1) Whether the peace officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23140, 23152, or 23153.

(2) Whether the person was placed under arrest.

(3) Whether the person refused to submit to, or did not complete, the test or tests after being requested by a peace officer.

(4) Whether, except for a person described in subdivision (a) of Section 23612 who is incapable of refusing, the person had been told that his or her driving privilege would be suspended or revoked if he or she refused to submit to, or did not complete, the test or tests.

(e) The person may request an administrative hearing pursuant to Section 13558. Except as provided in subdivision (e) of Section 13558, the request for an administrative hearing does not stay the order of suspension or revocation.

(f) This section shall become operative on September 20, 2005.

SEC. 7.4. Section 13353 is added to the Vehicle Code, to read:

13353. (a) If a person refuses the officer's request to submit to, or fails to complete, a chemical test or tests pursuant to Section 23612, upon receipt of the officer's sworn statement that the officer had

reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23140, 23152, or 23153, and that the person had refused to submit to, or did not complete, the test or tests after being requested by the officer, the department shall do one of the following:

(1) Suspend the person's privilege to operate a motor vehicle for a period of one year.

(2) Revoke the person's privilege to operate a motor vehicle for a period of two years if the refusal occurred within seven years of either (A) a separate violation of Section 23103 as specified in Section 23103.5, or of Section 23140, 23152, or 23153, or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, that resulted in a conviction, or (B) a suspension or revocation of the person's privilege to operate a motor vehicle pursuant to this section or Section 13353.2 for an offense that occurred on a separate occasion.

(3) Revoke the person's privilege to operate a motor vehicle for a period of three years if the refusal occurred within seven years of any of the following:

(A) Two or more separate violations of Section 23103 as specified in Section 23103.5, or of Section 23140, 23152, or 23153, or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, or any combination thereof, that resulted in convictions.

(B) Two or more suspensions or revocations of the person's privilege to operate a motor vehicle pursuant to this section or Section 13353.2 for offenses that occurred on separate occasions.

(C) Any combination of two or more of those convictions or administrative suspensions or revocations.

The officer's sworn statement shall be submitted pursuant to Section 13380 on a form furnished or approved by the department. The suspension or revocation shall not become effective until 30 days after the giving of written notice thereof, or until the end of any stay of the suspension or revocation, as provided for in Section 13558.

(D) For the purposes of this section, a conviction of any offense in any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or the Dominion of Canada that, if committed in this state, would be a violation of Section 23103, as specified in Section 23103.5, or Section 23140, 23152, or 23153, or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, is a conviction of that particular section of the Vehicle Code or Penal Code.

(b) If a person on more than one occasion in separate incidents, refuses the officer's request to submit to, or fails to complete, a chemical test or tests pursuant to Section 23612 while driving a motor vehicle, upon the receipt of the officer's sworn statement that the officer had reasonable cause to believe the person had been driving a motor vehicle

in violation of Section 21340, 23152, or 25153, the department shall disqualify the person from operating a commercial vehicle for the rest of his or her lifetime.

(c) The notice of the order of suspension or revocation under this section shall be served on the person by a peace officer pursuant to Section 23612. The notice of the order of suspension or revocation shall be on a form provided by the department. If the notice of the order of suspension or revocation has not been served by the peace officer pursuant to Section 23612, the department immediately shall notify the person in writing of the action taken. The peace officer who serves the notice, or the department, if applicable, also shall provide, if the officer or department, as the case may be, determines that it is necessary to do so, the person with the appropriate non-English notice developed pursuant to subdivision (d) of Section 14100.

(d) Upon receipt of the officer's sworn statement, the department shall review the record. For purposes of this section, the scope of the administrative review shall cover all of the following issues:

(1) Whether the peace officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23140, 23152, or 23153.

(2) Whether the person was placed under arrest.

(3) Whether the person refused to submit to, or did not complete, the test or tests after being requested by a peace officer.

(4) Whether, except for the persons described in subdivision (a) of Section 23612 who are incapable of refusing, the person had been told that his or her driving privilege would be suspended or revoked if he or she refused to submit to, or did not complete, the test or tests.

(e) The person may request an administrative hearing pursuant to Section 13558. Except as provided in subdivision (e) of Section 13558, the request for an administrative hearing does not stay the order of suspension or revocation.

(f) The suspension or revocation imposed under this section shall run concurrently with any restriction, suspension, or revocation imposed under Section 13352, 13352.4, or 13352.5 that resulted from the same arrest.

(g) This section shall become operative on September 20, 2005.

SEC. 7.5. Section 13353 is added to the Vehicle Code, read:

13353. (a) If a person refuses the officer's request to submit to, or fails to complete, a chemical test or tests pursuant to Section 23612, upon receipt of the officer's sworn statement that the officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23140, 23152, or 23153, and that the person had refused to submit to, or did not complete, the test or tests after being requested by the officer, the department shall do one of the following:

(1) Suspend the person's privilege to operate a motor vehicle for a period of one year.

(2) Revoke the person's privilege to operate a motor vehicle for a period of two years if the refusal occurred within 10 years of either (A) a separate violation of Section 23103 as specified in Section 23103.5, or of Section 23140, 23152, or 23153, or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, that resulted in a conviction, or (B) a suspension or revocation of the person's privilege to operate a motor vehicle pursuant to this section or Section 13353.2 for an offense that occurred on a separate occasion.

(3) Revoke the person's privilege to operate a motor vehicle for a period of three years if the refusal occurred within 10 years of any of the following:

(A) Two or more separate violations of Section 23103 as specified in Section 23103.5, or of Section 23140, 23152, or 23153, or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, or any combination thereof, that resulted in convictions.

(B) Two or more suspensions or revocations of the person's privilege to operate a motor vehicle pursuant to this section or Section 13353.2 for offenses that occurred on separate occasions.

(C) Any combination of two or more of those convictions or administrative suspensions or revocations.

The officer's sworn statement shall be submitted pursuant to Section 13380 on a form furnished or approved by the department. The suspension or revocation shall not become effective until 30 days after the giving of written notice thereof, or until the end of any stay of the suspension or revocation, as provided for in Section 13558.

(D) For the purposes of this section, a conviction of any offense in any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or the Dominion of Canada that, if committed in this state, would be a violation of Section 23103, as specified in Section 23103.5, or Section 23140, 23152, or 23153, or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, is a conviction of that particular section of the Vehicle Code or Penal Code.

(b) If a person on more than one occasion in separate incidents refuses the officer's request to submit to, or fails to complete, a chemical test or tests pursuant to Section 23612 while driving a motor vehicle, upon the receipt of the officer's sworn statement that the officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23140, 23152, or 23153, the department shall disqualify the person from operating a commercial motor vehicle for the rest of his her lifetime.

(c) The notice of the order of suspension or revocation under this section shall be served on the person by a peace officer pursuant to Section 23612. The notice of the order of suspension or revocation shall be on a form provided by the department. If the notice of the order of suspension or revocation has not been served by the peace officer pursuant to Section 23612, the department immediately shall notify the person in writing of the action taken. The peace officer who serves the notice, or the department, if applicable, also shall provide, if the officer or department, as the case may be, determines that it is necessary to do so, the person with the appropriate non-English notice developed pursuant to subdivision (d) of Section 14100.

(d) Upon the receipt of the officer's sworn statement, the department shall review the record. For purposes of this section, the scope of the administrative review shall cover all of the following issues:

(1) Whether the peace officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23140, 23152, or 23153.

(2) Whether the person was placed under arrest.

(3) Whether the person refused to submit to, or did not complete, the test or tests after being requested by a peace officer.

(4) Whether, except for a person described in subdivision (a) of Section 23612 who is incapable of refusing, the person had been told that his or her driving privilege would be suspended or revoked if he or she refused to submit to, or did not complete, the test or tests.

(e) The person may request an administrative hearing pursuant to Section 13558. Except as provided in subdivision (e) of Section 13558, the request for an administrative hearing does not stay the order of suspension or revocation.

(f) The suspension or revocation imposed under this section shall run concurrently with any restriction, suspension, or revocation imposed under Section 13352, 13352.4, or 13352.5 that resulted from the same arrest.

(g) This section shall become operative on September 20, 2005.

SEC. 8. Section 13353.4 of the Vehicle Code is amended to read:

13353.4. (a) Except as provided in Section 13353.7 or 13353.8, the driving privilege shall not be restored, and a restricted or hardship permit to operate a motor vehicle shall not be issued, to a person during the suspension or revocation period specified in Section 13353, 13353.1, or 13353.3.

(b) The privilege to operate a motor vehicle shall not be restored after a suspension or revocation pursuant to Section 13352, 13353, 13353.1, or 13353.2 until all applicable fees, including the fees prescribed in Section 14905, have been paid and the person gives proof of financial responsibility, as defined in Section 16430, to the department.

(c) This section shall become operative on September 20, 2005.

SEC. 9. Section 13353.6 of the Vehicle Code is amended to read:

13353.6. (a) If the person's driver's license is a commercial driver's license, as defined in Section 15210, and if the person has not had a separate violation of Section 23103 as specified in Section 23103.5, Section 23152, or Section 23153 of this code, or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code which resulted in a conviction, and if the person's privilege to operate a motor vehicle has not been previously suspended or revoked pursuant to Section 13353 or 13353.2 for an offense which occurred on a separate occasion, notwithstanding Section 13551, the department shall, upon receiving the officer's sworn statement and the receipt of the person's driver's license and after review pursuant to subdivision (d) of Section 13353.2, suspend the person's privilege to operate a motor vehicle for 30 days, and then reissue the person a commercial driver's license and endorsements with restrictions, as follows:

(1) The restricted commercial driver's license shall authorize the operation of a motor vehicle only to and from, and in the course and scope of, the person's employment.

(2) The term of the restricted license is 30 days after the date that the order of suspension is effective pursuant to Section 13353.3 until six months after that date.

(b) The person may be issued an unrestricted commercial driver's license after the term of restriction under this section.

(c) This section applies only to the holder of a commercial driver's license who was not operating a commercial vehicle, as defined in Section 15210, at the time of the offense.

(d) This section shall become inoperative on September 20, 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 that date on which it becomes inoperative and is repealed.

SEC. 10. Section 13353.7 of the Vehicle Code is amended to read:

13353.7. (a) Subject to subdivision (c), if the person whose driving privilege has been suspended under Section 13353.2 has not been convicted of, or found to have committed, a separate violation of Section 23103, as specified in Section 23103.5, Section 23140, 23152, or 23153 of this code, or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, and if the person's privilege to operate a motor vehicle has not been suspended or revoked pursuant to Section 13353 or 13353.2 for an offense that occurred on a separate occasion within seven years of the occasion in question and, if the person subsequently enrolls in a program described in Section 11837.3 of the Health and Safety Code, pursuant to subdivision (b) of Section 23538, that person, if 21 years of age or older at the time the offense occurred,

may apply to the department for a restricted driver's license limited to travel to and from the activities required by the program or to and from and in the course of the person's employment, or both. Notwithstanding any other provision of law, if the person's restricted driver's license permits travel to and from and in the course of his or her employment, the person's privilege to operate a motor vehicle shall be suspended, subject to the restriction, for six months. After receiving proof of enrollment in the program, and if the person has not been arrested subsequent to the offense for which the person's driving privilege has been suspended under Section 13353.2 for a violation of Section 23103, as specified in Section 23103.5, Section 23140, 23152, or 23153 of this code, or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, and if the person's privilege to operate a motor vehicle has not been suspended or revoked pursuant to Section 13353 or 13353.2 for an offense that occurred on a separate occasion, notwithstanding Section 13551, the department shall, after review pursuant to Section 13557, suspend the person's privilege to operate a motor vehicle for 30 days and then issue the person a restricted driver's license under the following conditions:

(1) The program shall report any failure to participate in the program to the department and shall certify successful completion of the program to the department.

(2) The person was 21 years of age or older at the time the offense occurred and gives proof of financial responsibility as defined in Section 16430.

(3) The restricted driver's license authorizes the operation of a motor vehicle only to and from the activities required under the program.

(4) If any person who has been issued a restricted license under this section fails at any time to participate in the program, the department shall suspend the restricted license immediately. The department shall give notice of the suspension under this paragraph in the same manner as prescribed in subdivision (b) of Section 13353.2 for the period specified in Section 13353.3, which is effective upon receipt by the person.

(5) On or after 60 days after the effective date of the restricted license, and upon notification of successful completion of the program, the department may issue an unrestricted driver's license to the person.

(b) If the court of jurisdiction in a criminal action arising out of the same offense orders the department to suspend or revoke the person's privilege to operate a motor vehicle or does not grant probation after conviction of that offense, notwithstanding subdivision (a), the department shall suspend or revoke the person's privilege pursuant to the order of the court or Section 13352.

(c) If the holder of a commercial driver's license was operating a commercial vehicle, as defined in Section 15210, at the time of the violation that resulted in the suspension of that person's driving privilege under Section 13353.2, the department shall, pursuant to this section, if the person is otherwise eligible, issue the person a class C driver's license restricted in the same manner and subject to the same conditions as specified in subdivision (a), except that the license shall not allow travel to and from or in the course of the person's employment.

(d) This section does not apply to a person whose driving privilege has been suspended or revoked pursuant to the order of the court or Section 13353 or 13353.2 for an offense that occurred on a separate occasion, or as a result of a conviction of a separate violation of Section 23103, as specified in Section 23103.5, or Section 23140, 23152, or 23153, which violation occurred within seven years of the offense in question. This subdivision shall be operative only so long as a one-year suspension of the driving privilege for a second or subsequent occurrence or offense, with no restricted or hardship licenses permitted, is required by Section 408 or 410 of Title 23 of the United States Code.

(e) This section shall become operative on September 20, 2005.

SEC. 10.1. Section 13353.7 of the Vehicle Code is amended to read:

13353.7. (a) Subject to subdivision (c) and except as provided in Section 13353.6 for persons who have commercial driver's licenses, if the person whose driving privilege has been suspended under Section 13353.2 has not been convicted of, or found to have committed, a separate violation of Section 23103, as specified in Section 23103.5, or Section 23140, 23152, or 23153 of this code, or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, and if the person's privilege to operate a motor vehicle has not been suspended or revoked pursuant to Section 13353 or 13353.2 for an offense that occurred on a separate occasion within 10 years of the occasion in question and, if the person subsequently enrolls in a program described in Section 11837.3 of the Health and Safety Code, pursuant to subdivision (b) of Section 23538, that person, if 21 years of age or older at the time the offense occurred, may apply to the department for a restricted driver's license limited to travel to and from the activities required by the program or to and from and in the course of the person's employment, or both. Notwithstanding any other provision of law, if the person's restricted driver's license permits travel to and from and in the course of his or her employment, the person's privilege to operate a motor vehicle shall be suspended, subject to the restriction, for six months. After receiving proof of enrollment in the program, and if the person has not been arrested subsequent to the offense for which the person's driving privilege has been suspended under Section 13353.2 for a violation of Section 23103, as specified in Section 23103.5, or Section

23140, 23152, or 23153 of this code, or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, and if the person's privilege to operate a motor vehicle has not been suspended or revoked pursuant to Section 13353 or 13353.2 for an offense that occurred on a separate occasion, notwithstanding Section 13551, the department shall, after review pursuant to Section 13557, suspend the person's privilege to operate a motor vehicle for 30 days and then issue the person a restricted driver's license under the following conditions:

(1) The program shall report any failure to participate in the program to the department and shall certify successful completion of the program to the department.

(2) The person was 21 years of age or older at the time the offense occurred and gives proof of financial responsibility as defined in Section 16430.

(3) The restricted driver's license authorizes the operation of a motor vehicle only to and from the activities required under the program.

(4) If a person who has been issued a restricted license under this section fails at any time to participate in the program, the department shall suspend the restricted license immediately. The department shall give notice of the suspension under this paragraph in the same manner as prescribed in subdivision (b) of Section 13353.2 for the period specified in Section 13353.3, that is effective upon receipt by the person.

(5) On or after 60 days after the effective date of the restricted license, and upon notification of successful completion of the program, the department may issue an unrestricted driver's license to the person.

(b) If the court of jurisdiction in a criminal action arising out of the same offense orders the department to suspend or revoke the person's privilege to operate a motor vehicle or does not grant probation after conviction of that offense, notwithstanding subdivision (a), the department shall suspend or revoke the person's privilege pursuant to the order of the court or Section 13352.

(c) If the holder of a commercial driver's license was operating a commercial vehicle, as defined in Section 15210, at the time of the violation which resulted in the suspension of that person's driving privilege under Section 13353.2, the department shall, pursuant to this section, if the person is otherwise eligible, issue the person a class C driver's license restricted in the same manner and subject to the same conditions as specified in subdivision (a), except that the license shall not allow travel to and from or in the course of the person's employment.

(d) This section does not apply to a person whose driving privilege has been suspended or revoked pursuant to the order of the court or Section 13353 or 13353.2 for an offense that occurred on a separate occasion, or as a result of a conviction of a separate violation of Section 23103, as specified in Section 23103.5, or Section 23140, 23152, or

23153, that violation occurred within 10 years of the offense in question. This subdivision shall be operative only so long as a one-year suspension of the driving privilege for a second or subsequent occurrence or offense, with no restricted or hardship licenses permitted, is required by Section 408 or 410 of Title 23 of the United States Code.

This section shall become inoperative on September 20, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute that becomes operative on or before January 1, 2006, deletes the dates in which it becomes inoperative and is repealed.

SEC. 10.2. Section 13353.7 is added to the Vehicle Code, to read:

13353.7. (a) Subject to subdivision (c), if the person whose driving privilege has been suspended under Section 13353.2 has not been convicted of, or found to have committed, a separate violation of Section 23103, as specified in Section 23103.5, or Section 23140, 23152, or 23153 of this code, or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, and if the person's privilege to operate a motor vehicle has not been suspended or revoked pursuant to Section 13353 or 13353.2 for an offense that occurred on a separate occasion within 10 years of the occasion in question and, if the person subsequently enrolls in a program described in Section 11837.3 of the Health and Safety Code, pursuant to subdivision (b) of Section 23538, that person, if 21 years of age or older at the time the offense occurred, may apply to the department for a restricted driver's license limited to travel to and from the activities required by the program or to and from and in the course of the person's employment, or both. Notwithstanding any other provision of law, if the person's restricted driver's license permits travel to and from and in the course of his or her employment, the person's privilege to operate a motor vehicle shall be suspended, subject to the restriction, for six months. After receiving proof of enrollment in the program, and if the person has not been arrested subsequent to the offense for which the person's driving privilege has been suspended under Section 13353.2 for a violation of Section 23103, as specified in Section 23103.5, or Section 23140, 23152, or 23153 of this code, or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, and if the person's privilege to operate a motor vehicle has not been suspended or revoked pursuant to Section 13353 or 13353.2 for an offense that occurred on a separate occasion, notwithstanding Section 13551, the department shall, after review pursuant to Section 13557, suspend the person's privilege to operate a motor vehicle for 30 days and then issue the person a restricted driver's license under the following conditions:

(1) The program shall report any failure to participate in the program to the department and shall certify successful completion of the program to the department.

(2) The person was 21 years of age or older at the time the offense occurred and gives proof of financial responsibility as defined in Section 16430.

(3) The restricted driver's license authorizes the operation of a motor vehicle only to and from the activities required under the program.

(4) If a person who has been issued a restricted license under this section fails at any time to participate in the program, the department shall suspend the restricted license immediately. The department shall give notice of the suspension under this paragraph in the same manner as prescribed in subdivision (b) of Section 13353.2 for the period specified in Section 13353.3, that is effective upon receipt by the person.

(5) On or after 60 days after the effective date of the restricted license, and upon notification of successful completion of the program, the department may issue an unrestricted driver's license to the person.

(b) If the court of jurisdiction in a criminal action arising out of the same offense orders the department to suspend or revoke the person's privilege to operate a motor vehicle or does not grant probation after conviction of that offense, notwithstanding subdivision (a), the department shall suspend or revoke the person's privilege pursuant to the order of the court or Section 13352.

(c) If the holder of a commercial driver's license was operating a commercial vehicle, as defined in Section 15210, at the time of the violation that resulted in the suspension of that person's driving privilege under Section 13353.2, the department shall, pursuant to this section, if the person is otherwise eligible, issue the person a class C driver's license restricted in the same manner and subject to the same conditions as specified in subdivision (a), except that the license shall not allow travel to and from or in the course of the person's employment.

(d) This section does not apply to a person whose driving privilege has been suspended or revoked pursuant to the order of the court or Section 13353 or 13353.2 for an offense that occurred on a separate occasion, or as a result of a conviction of a separate violation of Section 23103, as specified in Section 23103.5, or Section 23140, 23152, or 23153, that violation occurred within 10 years of the offense in question. This subdivision shall be operative only so long as a one-year suspension of the driving privilege for a second or subsequent occurrence or offense, with no restricted or hardship licenses permitted, is required by Section 408 or 410 of Title 23 of the United States Code.

(e) This section shall become operative on September 20, 2005.

SEC. 10.4. Section 13353.7 is added to the Vehicle Code, to read:

13353.7. (a) Subject to subdivision (c), if the person whose driving privilege has been suspended under Section 13353.2 has not been convicted of, or found to have committed, a separate violation of Section 23103, as specified in Section 23103.5, or Section 23140, 23152, or

23153 of this code, or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, and if the person's privilege to operate a motor vehicle has not been suspended or revoked pursuant to Section 13353 or 13353.2 for an offense that occurred on a separate occasion within seven years of the occasion in question and, if the person subsequently enrolls in a driving-under-the-influence program licensed under Section 11836 of the Health and Safety Code, as described in subdivision (b) of Section 23538, that person, if 21 years of age or older at the time the offense occurred, may apply to the department for a restricted driver's license limited to travel to and from the activities required by the program and to and from and in the course of the person's employment. After receiving proof of enrollment in the program, and if the person has not been arrested subsequent to the offense for which the person's driving privilege has been suspended under Section 13353.2 for a violation of Section 23103, as specified in Section 23103.5, Section 23140, 23152, or 23153 of this code, or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, and if the person's privilege to operate a motor vehicle has not been suspended or revoked pursuant to Section 13353 or 13353.2 for an offense that occurred on a separate occasion, notwithstanding Section 13551, the department shall, after review pursuant to Section 13557, suspend the person's privilege to operate a motor vehicle for 30 days and then issue the person a restricted driver's license under the following conditions:

(1) The program shall report any failure to participate in the program to the department and shall certify successful completion of the program to the department.

(2) The person was 21 years of age or older at the time the offense occurred and gives proof of financial responsibility as defined in Section 16430.

(3) The restriction shall be imposed for a period of five months.

(4) If any person who has been issued a restricted license under this section fails at any time to participate in the program, the department shall suspend the restricted license immediately. The department shall give notice of the suspension under this paragraph in the same manner as prescribed in subdivision (b) of Section 13353.2 for the period specified in Section 13353.3, that is effective upon receipt by the person.

(b) Notwithstanding subdivision (a) and upon a conviction of Section 23152 or 23153, the department shall suspend or revoke the person's privilege to operate a motor vehicle under Section 13352.

(c) If the holder of a commercial driver's license was operating a commercial vehicle, as defined in Section 15210, at the time of the violation that resulted in the suspension of that person's driving privilege under Section 13353.2, the department shall, pursuant to this section, if the person is otherwise eligible, issue the person a class C driver's

license restricted in the same manner and subject to the same conditions as specified in subdivision (a), except that the license may not allow travel to and from or in the course of the person's employment.

(d) This section does not apply to a person whose driving privilege has been suspended or revoked pursuant to Section 13353 or 13353.2 for an offense that occurred on a separate occasion, or as a result of a conviction of a separate violation of Section 23103, as specified in Section 23103.5, or Section 23140, 23152, or 23153, which violation occurred within seven years of the offense in question. This subdivision shall be operative only so long as a one-year suspension of the driving privilege for a second or subsequent occurrence or offense, with no restricted or hardship licenses permitted, is required by Section 408 or 410 of Title 23 of the United States Code.

(e) This section shall become operative on September 20, 2005.

SEC. 10.5. Section 13353.7 is added to the Vehicle Code, to read:

13353.7. (a) Subject to subdivision (c), if the person whose driving privilege has been suspended under Section 13353.2 has not been convicted of, or found to have committed, a separate violation of Section 23103, as specified in Section 23103.5, or Section 23140, 23152, or 23153 of this code, or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, and if the person's privilege to operate a motor vehicle has not been suspended or revoked pursuant to Section 13353 or 13353.2 for an offense that occurred on a separate occasion within 10 years of the occasion in question and, if the person subsequently enrolls in a driving-under-the-influence program licensed under Section 11836 of the Health and Safety Code, as described in subdivision (b) of Section 23538, that person, if 21 years of age or older at the time the offense occurred, may apply to the department for a restricted driver's license limited to travel to and from the activities required by the program and to and from and in the course of the person's employment. After receiving proof of enrollment in the program, and if the person has not been arrested subsequent to the offense for which the person's driving privilege has been suspended under Section 13353.2 for a violation of Section 23103, as specified in Section 23103.5, or Section 23140, 23152, or 23153 of this code, or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, and if the person's privilege to operate a motor vehicle has not been suspended or revoked pursuant to Section 13353 or 13353.2 for an offense that occurred on a separate occasion, notwithstanding Section 13551, the department shall, after review pursuant to Section 13557, suspend the person's privilege to operate a motor vehicle for 30 days and then issue the person a restricted driver's license under the following conditions:

(1) The program shall report any failure to participate in the program to the department and shall certify successful completion of the program to the department.

(2) The person was 21 years of age or older at the time the offense occurred and gives proof of financial responsibility as defined in Section 16430.

(3) The restriction shall be imposed for a period of five months.

(4) If a person who has been issued a restricted license under this section fails at any time to participate in the program, the department shall suspend the restricted license immediately. The department shall give notice of the suspension under this paragraph in the same manner as prescribed in subdivision (b) of Section 13353.2 for the period specified in Section 13353.3, that is effective upon receipt by the person.

(b) Notwithstanding subdivision (a), and upon a conviction of Section 23152 or 23153, the department shall suspend or revoke the person's privilege to operate a motor vehicle under Section 13352.

(c) If the holder of a commercial driver's license was operating a commercial vehicle, as defined in Section 15210, at the time of the violation that resulted in the suspension of that person's driving privilege under Section 13353.2, the department shall, pursuant to this section, if the person is otherwise eligible, issue the person a class C driver's license restricted in the same manner and subject to the same conditions as specified in subdivision (a), except that the license may not allow travel to and from or in the course of the person's employment.

(d) This section does not apply to a person whose driving privilege has been suspended or revoked pursuant to Section 13353 or 13353.2 for an offense that occurred on a separate occasion, or as a result of a conviction of a separate violation of Section 23103, as specified in Section 23103.5, or Section 23140, 23152, or 23153, that violation occurred within 10 years of the offense in question. This subdivision shall be operative only so long as a one-year suspension of the driving privilege for a second or subsequent occurrence or offense, with no restricted or hardship licenses permitted, is required by Section 408 or 410 of Title 23 of the United States Code.

(e) This section shall become operative on September 20, 2005.

SEC. 11. Section 13366.5 is added to the Vehicle Code, to read:

13366.5. (a) Notwithstanding Section 13366, whenever in this code the department is required to disqualify the commercial driving privilege of a person to operate a commercial motor vehicle upon the conviction of that person of a violation of this code, the suspension or revocation shall begin upon receipt by the department of a duly certified abstract of any court record showing that the person has been so convicted.

(b) This section shall become operative on September 20, 2005.

SEC. 12. Section 13369 of the Vehicle Code is amended to read:

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

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

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

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

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

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

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

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

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

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

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

(7) Has demonstrated irrational behavior to the extent that a reasonable and prudent person would have reasonable cause to believe

that the applicant's ability to perform the duties of a driver may be impaired.

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

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

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

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

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

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

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

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

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

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

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

(g) This section shall become operative on September 20, 2005.

SEC. 12.3. Section 13369 of the Vehicle Code is amended to read:

13369. (a) This section applies to the following endorsements and certificates:

(1) Passenger transportation vehicle.

(2) Hazardous materials.

(3) Schoolbus.

(4) School pupil activity bus.
(5) Youth bus.
(6) General public paratransit vehicle.
(7) Farm labor vehicle.
(8) Vehicle used for the transportation of developmentally disabled persons.

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

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

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

(3) Notwithstanding paragraphs (1) and (2), does not meet the qualifications for issuance of a hazardous materials endorsement set forth in Parts 383, 384, and 1572 of Title 49 of the Code of Federal Regulations.

(c) The department may refuse to issue or renew, or may suspend or revoke the certificate or endorsement of a person who meets any of the following conditions:

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

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

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

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

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

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

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

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

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

(d) The department may cancel the certificate or endorsement of any driver who meets any of the following conditions:

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

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

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

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

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

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

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

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

(h) 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. 12.5. Section 13369 is added to the Vehicle Code, to read:

13369. (a) This section applies to the following endorsements and certificates:

(1) Passenger transportation vehicle.

(2) Hazardous materials.

(3) Schoolbus.

(4) School activity bus.

(5) Youth bus.

(6) General public paratransit vehicle.

(7) Farm labor vehicle.

(8) Vehicle used for the transportation of developmentally disabled persons.

(b) The department shall refuse to issue or renew, or shall revoke the certificate or endorsement of any person who meets the following conditions:

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

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

(3) Notwithstanding paragraphs (1) and (2), does not meet the qualifications for issuance of a hazardous materials endorsement set forth in Parts 383, 384, and 1572 of Title 49 of the Code of Federal Regulations.

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

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

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

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

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

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

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

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

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

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

(d) The department may cancel the certificate or endorsement of any driver who meets any of the following conditions:

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

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

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

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

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

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

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

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

(h) This section shall become operative on September 20, 2005.

SEC. 13. Section 14601.5 of the Vehicle Code is amended to read:

14601.5. (a) A person may not drive a motor vehicle at any time when that person's driving privilege is suspended or revoked pursuant to Section 13353, 13353.1, or 13353.2 and that person has knowledge of the suspension or revocation.

(b) Except in full compliance with the restriction, a person may not drive a motor vehicle at any time when that person's driving privilege is restricted pursuant to Section 13353.7 or 13353.8 and that person has knowledge of the restriction.

(c) Knowledge of suspension, revocation, or restriction of the driving privilege shall be conclusively presumed if notice has been given by the department to the person pursuant to Section 13106. The presumption established by this subdivision is a presumption affecting the burden of proof.

(d) A person convicted of a violation of this section is punishable, as follows:

(1) Upon a first conviction, by imprisonment in the county jail for not more than six months or by a fine of not less than three hundred dollars ($300) or more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(2) If the offense occurred within five years of a prior offense that resulted in a conviction for a violation of this section or Section 14601, 14601.1, 14601.2, or 14601.3, by imprisonment in the county jail for not less than 10 days or more than one year, and by a fine of not less than five hundred dollars ($500) or more than two thousand dollars ($2,000).

(e) In imposing the minimum fine required by subdivision (d), the court shall take into consideration the defendant's ability to pay the fine and may, in the interest of justice, and for reasons stated in the record, reduce the amount of that minimum fine to less than the amount otherwise imposed.

(f) This section does not prohibit a person who is participating in, or has completed, an alcohol or drug rehabilitation program from driving a motor vehicle, that is owned or utilized by the person's employer, during the course of employment on private property that is owned or

utilized by the employer, except an offstreet parking facility as defined in subdivision (d) of Section 12500.

(g) When the prosecution agrees to a plea of guilty or nolo contendere to a charge of a violation of this section in satisfaction of, or as a substitute for, an original charge of a violation of Section 14601.2, and the court accepts that plea, except, in the interest of justice, when the court finds it would be inappropriate, the court shall, pursuant to Section 23575, require the person convicted, in addition to any other requirements, to install a certified ignition interlock device on any vehicle that the person owns or operates for a period not to exceed three years.

(h) This section shall become operative on September 20, 2005.

SEC. 13.3. Section 14601.5 of the Vehicle Code is amended to read:

14601.5. (a) No person shall drive a motor vehicle at any time when that person's driving privilege is suspended or revoked pursuant to Section 13353, 13353.1, or 13353.2 and that person has knowledge of the suspension or revocation.

(b) Except in full compliance with the restriction, no person drive a motor vehicle at any time when that person's driving privilege is restricted pursuant to Section 13353.6, 13353.7, or 13353.8 and that person has knowledge of the restriction.

(c) Knowledge of suspension, revocation, or restriction of the driving privilege shall be conclusively presumed if notice has been given by the department to the person pursuant to Section 13106. The presumption established by this subdivision is a presumption affecting the burden of proof.

(d) Any person convicted of a violation of this section shall be punished as follows:

(1) Upon a first conviction, by imprisonment in the county jail for not more than six months or by a fine of not less than three hundred dollars ($300) or more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(2) If the offense occurred within five years of a prior offense which resulted in a conviction for a violation of this section or Section 14601, 14601.1, 14601.2, or 14601.3, by imprisonment in the county jail for not less than 10 days or more than one year, and by a fine of not less than five hundred dollars ($500) or more than two thousand dollars ($2,000).

(e) In imposing the minimum fine required by subdivision (d), the court shall take into consideration the defendant's ability to pay the fine and may, in the interest of justice, and for reasons stated in the record, reduce the amount of that minimum fine to less than the amount otherwise imposed.

(f) Nothing in this section prohibits a person who is participating in, or has completed, an alcohol or drug rehabilitation program from driving

a motor vehicle, that is owned or utilized by the person's employer, during the course of employment on private property that is owned or utilized by the employer, except an offstreet parking facility as defined in subdivision (d) of Section 12500.

(g) When the prosecution agrees to a plea of guilty or nolo contendere to a charge of a violation of this section in satisfaction of, or as a substitute for, an original charge of a violation of Section 14601.2, and the court accepts that plea, except, in the interest of justice, when the court finds it would be inappropriate, the court shall, pursuant to Section 23575, require the person convicted, in addition to any other requirements, to install a certified ignition interlock device on any vehicle that the person owns or operates for a period not to exceed three years.

(h) This section also applies to the operation of an off-highway motor vehicle on those lands to which the Chappie-Z'berg Off-Highway Motor Vehicle Law of 1971 (Division 16.5 (commencing with Section 38000)) applies as to off-highway motor vehicles, as described in Section 38001.

(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. 13.5. Section 14601.5 is added to the Vehicle Code, to read:

14601.5. (a) A person may not drive a motor vehicle at any time when that person's driving privilege is suspended or revoked pursuant to Section 13353, 13353.1, or 13353.2 and that person has knowledge of the suspension or revocation.

(b) Except in full compliance with the restriction, a person may not drive a motor vehicle at any time when that person's driving privilege is restricted pursuant to Section 13353.7 or 13353.8 and that person has knowledge of the restriction.

(c) Knowledge of suspension, revocation, or restriction of the driving privilege shall be conclusively presumed if notice has been given by the department to the person pursuant to Section 13106. The presumption established by this subdivision is a presumption affecting the burden of proof.

(d) A person convicted of a violation of this section is punishable, as follows:

(1) Upon a first conviction, by imprisonment in the county jail for not more than six months or by a fine of not less than three hundred dollars ($300) or more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(2) If the offense occurred within five years of a prior offense that resulted in a conviction for a violation of this section or Section 14601, 14601.1, 14601.2, or 14601.3, by imprisonment in the county jail for not

less than 10 days or more than one year, and by a fine of not less than five hundred dollars ($500) or more than two thousand dollars ($2,000).

(e) In imposing the minimum fine required by subdivision (d), the court shall take into consideration the defendant's ability to pay the fine and may, in the interest of justice, and for reasons stated in the record, reduce the amount of that minimum fine to less than the amount otherwise imposed.

(f) This section does not prohibit a person who is participating in, or has completed, an alcohol or drug rehabilitation program from driving a motor vehicle, that is owned or utilized by the person's employer, during the course of employment on private property that is owned or utilized by the employer, except an offstreet parking facility as defined in subdivision (d) of Section 12500.

(g) When the prosecution agrees to a plea of guilty or nolo contendere to a charge of a violation of this section in satisfaction of, or as a substitute for, an original charge of a violation of Section 14601.2, and the court accepts that plea, except, in the interest of justice, when the court finds it would be inappropriate, the court shall, pursuant to Section 23575, require the person convicted, in addition to any other requirements, to install a certified ignition interlock device on any vehicle that the person owns or operates for a period not to exceed three years.

(h) This section also applies to the operation of an off-highway motor vehicle on those lands to which the Chappie-Z'berg Off-Highway Motor Vehicle Law of 1971 (Division 16.5 (commencing with Section 38000)) applies as to off-highway motor vehicles, as described in Section 38001.

(i) This section shall become operative on September 20, 2005.

SEC. 14. Section 15210 of the Vehicle Code is amended to read:

15210. Notwithstanding any other provision of this code, as used in this chapter, the following terms have the following meanings:

(a) ''Commercial driver's license'' means a driver's license issued by a state or other jurisdiction, in accordance with the standards contained in Part 383 of Title 49 of the Code of Federal Regulations, which authorizes the licenseholder to operate a class or type of commercial motor vehicle.

(b) (1) ''Commercial motor vehicle'' means any vehicle or combination of vehicles that requires a class A or class B license, or a class C license with an endorsement issued pursuant to paragraph (4) of subdivision (a) of Section 15278.

(2) ''Commercial motor vehicle'' does not include any of the following:

(A) A recreational vehicle, as defined in Section 18010 of the Health and Safety Code.

(B) Military equipment operated by noncivilian personnel, which is owned or operated by the United States Department of Defense, including the National Guard, as provided in Parts 383 and 391 of Title 49 of the Code of Federal Regulations.

(C) An implement of husbandry operated by a person who is not required to obtain a driver's license under this code.

(D) Vehicles operated by persons exempted pursuant to Section 25163 of the Health and Safety Code or a vehicle operated in an emergency situation at the direction of a peace officer pursuant to Section 2800.

(c) ''Controlled substance'' has the same meaning as defined by the federal Controlled Substances Act (21 U.S.C. Sec. 802).

(d) ''Conviction'' means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court costs, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.

(e) ''Disqualification'' means a prohibition against driving a commercial motor vehicle.

(f) ''Driving a commercial vehicle under the influence'' means committing any one or more of the following unlawful acts in a commercial motor vehicle:

(1) Driving a commercial motor vehicle while the operator's blood-alcohol concentration level is 0.04 percent or more, by weight in violation of subdivision (d) of Section 23152.

(2) Driving under the influence of alcohol, as prescribed in subdivision (a) or (b) of Section 23152.

(3) Refusal to undergo testing as required under this code in the enforcement of Subpart D of Part 383 or Subpart A of Part 392 of Title 49 of the Code of Federal Regulations.

(g) ''Employer'' means any person, including the United States, a state, or political subdivision of a state, who owns or leases a commercial motor vehicle or assigns drivers to operate that vehicle. A person who employs himself or herself as a commercial vehicle driver is considered to be both an employer and a driver for purposes of this chapter.

(h) ''Fatality'' means the death of a person as a result of a motor vehicle accident.

(i) ''Felony'' means an offense under state or federal law that is punishable by death or imprisonment for a term exceeding one year.

(j) ''Gross combination weight rating'' means the value specified by the manufacturer as the maximum loaded weight of a combination or

articulated vehicle. In the absence of a value specified by the manufacturer, gross vehicle weight rating will be determined by adding the gross vehicle weight rating of the power unit and the total weight of the towed units and any load thereon.

(k) ''Gross vehicle weight rating'' means the value specified by the manufacturer as the maximum loaded weight of a single vehicle, as defined in Section 390.

(*l*) ''Imminent hazard'' means the existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury, or substantial endangerment to health, property, or the environment may occur before the reasonable foreseeable completion date of a formal proceeding begun to lesson the risk of death, illness, injury, or endangerment.

(m) ''Noncommercial motor vehicle'' means a motor vehicle or combination of motor vehicles that is not included within the definition in subdivision (b).

(n) ''Nonresident commercial driver's license'' means a commercial driver's license issued to an individual by a state under one of the following provisions:

(1) The individual is domiciled in a foreign country.

(2) The individual is domiciled in another state.

(o) ''Schoolbus'' is a commercial motor vehicle, as defined in Section 545.

(p) ''Serious traffic violation'' includes any of the following:

(1) Excessive speeding, as defined pursuant to the federal Commercial Motor Vehicle Safety Act (P.L. 99-570) involving any single offense for any speed of 15 miles an hour or more above the posted speed limit.

(2) Reckless driving, as defined pursuant to the federal Commercial Motor Vehicle Safety Act (P.L. 99-570), and driving in the manner described under Section 2800.1, 2800.2, or 2800.3, including, but not limited to, the offense of driving a commercial motor vehicle in willful or wanton disregard for the safety of persons or property.

(3) A violation of any state or local law involving the safe operation of a motor vehicle, arising in connection with a fatal traffic accident.

(4) Any other similar violation of a state or local law involving the safe operation of a motor vehicle, as defined pursuant to the Commercial Motor Vehicle Safety Act (Title XII of P.L. 99-570).

(5) Driving a commercial motor vehicle without a commercial driver's license.

(6) Driving a commercial motor vehicle without the driver having in his or her possession a commercial driver's license, unless the driver provides proof at the subsequent court appearance that he or she held a valid commercial driver's license on the date of the violation.

(7) Driving a commercial motor vehicle when the driver has not met the minimum testing standards for that vehicle as to the class or type of cargo the vehicle is carrying.

In the absence of a federal definition, existing definitions under this code shall apply.

(q) ''State'' means a state of the United States or the District of Columbia.

(r) ''Tank vehicle'' means any commercial motor vehicle that is designed to transport any liquid or gaseous material within a tank that is permanently or temporarily attached to the vehicle or the chassis, including, but not limited to, cargo tanks and portable tanks, as defined in Part 171 of Title 49 of the Code of Federal Regulations. This definition does not include portable tanks having a rated capacity under 1,000 gallons.

(s) This section shall become operative on September 20, 2005.

SEC. 15. Section 15275.1 is added to the Vehicle Code, to read:

15275.1. (a) A schoolbus endorsement shall be issued to a commercial vehicle operator who possesses or qualifies for a valid commercial driver's license with a passenger endorsement and is issued a schoolbus driver's certificate under Section 12517.

(b) This section shall become operative on September 20, 2005.

SEC. 16. Section 15278 of the Vehicle Code is amended to read:

15278. (a) A driver is required to obtain an endorsement issued by the department to operate any commercial motor vehicle that is any of the following:

(1) A double trailer.

(2) A passenger transportation vehicle, which includes, but is not limited to, a bus, farm labor vehicle, or general public paratransit vehicle when designed, used, or maintained to carry more than 10 persons including the driver.

(3) A schoolbus.

(4) A tank vehicle.

(5) A vehicle carrying hazardous materials, as defined in Section 353, that is required to display placards pursuant to Section 27903, unless the driver is exempt from the endorsement requirement as provided in subdivision (b). This paragraph does not apply to any person operating an implement of husbandry who is not required to obtain a driver's license under this code.

(b) This section does not apply to any person operating a vehicle in an emergency situation at the direction of a peace officer pursuant to Section 2800, or to a driver issued a restricted firefighter's license and driving a vehicle operated for the purpose of hauling compressed air tanks for breathing apparatus that do not exceed 2,500 pounds.

(c) This section shall become operative on September 20, 2005.

SEC. 17. Section 15300 of the Vehicle Code is amended to read:

15300. (a) A driver of a commercial motor vehicle may not operate a commercial motor vehicle for a period of one year if the driver is convicted of a first violation of any of the following:

(1) Subdivision (a) or (b) of Section 23152.

(2) Subdivision (d) of Section 23152.

(3) Subdivision (a) or (b) of Section 23153.

(4) Subdivision (d) of Section 23153.

(5) Leaving the scene of an accident involving a commercial motor vehicle operated by the driver.

(6) Using a motor vehicle to commit a felony, other than a felony described in Section 15304.

(7) Driving a commercial motor vehicle when the driver's commercial driver's license is revoked, suspended, or canceled based on the driver's operation of a commercial motor vehicle or when the driver is disqualified from operating a commercial motor vehicle based on the driver's operation of a commercial motor vehicle.

(8) Causing a fatality involving conduct defined pursuant to subparagraph (E) of paragraph (1) of subsection (b) of Section 31310 of Title 49 of the United States Code.

(9) While operating a motor vehicle, refuses to submit to, or fails to complete, a chemical test or tests pursuant to Section 23612.

(10) A violation of Section 2800.1, 2800.2, or 2800.3 that involves a commercial motor vehicle.

(b) If any of the above violations, or a violation listed in paragraph (2) of subdivision (a) of Section 13350 or Section 13352 or 13357, occurred while transporting a hazardous material, the period specified in subdivision (a) shall be three years.

(c) This section shall become operative on September 20, 2005.

SEC. 18. Section 15302 of the Vehicle Code is amended to read:

15302. A driver of a commercial motor vehicle may not operate a commercial motor vehicle for the rest of his or her life if convicted of more than one violation of any of the following:

(a) Subdivision (a) or (b) of Section 23152.

(b) Subdivision (d) of Section 23152.

(c) Subdivision (a) or (b) of Section 23153.

(d) Subdivision (d) of Section 23153.

(e) Leaving the scene of an accident involving a commercial motor vehicle operated by the driver.

(f) Using a motor vehicle to commit a felony, other than a felony described in Section 15304.

(g) Driving a commercial motor vehicle when the driver's commercial driver's license is revoked, suspended, or canceled based on the driver's operation of a commercial motor vehicle or when the driver

is disqualified from operating a commercial motor vehicle based on the driver's operation of a commercial motor vehicle.

(h) Causing a fatality involving conduct defined pursuant to subparagraph (E) of paragraph (1) of subsection (c) of Section 31310 of Title 49 of the United States Code.

(i) While operating a motor vehicle, refuses to submit to, or fails to complete, a chemical test or tests in violation of Section 23612.

(j) A violation of Section 2800.1, 2800.2, or 2800.3 that involves a commercial motor vehicle.

(k) Any combination of the above violations or a violation listed in paragraph (2) of subdivision (a) of Section 13350 or Section 13352 or 13357 that occurred while transporting a hazardous material.

(*l*) This section shall become operative on September 20, 2005.

SEC. 19. Section 15304 of the Vehicle Code is amended to read:

15304. (a) A driver may not operate a commercial motor vehicle for the rest of his or her life who uses a motor vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.

(b) This section shall become operative on September 20, 2005.

SEC. 20. Section 15306 of the Vehicle Code is amended to read:

15306. (a) A driver may not operate a commercial motor vehicle for a period of 60 days if the person is convicted of a serious traffic violation involving a commercial motor vehicle and the offense occurred within three years of a separate offense of a serious traffic violation that resulted in a conviction.

(b) A driver may not operate a commercial motor vehicle for a period of 60 days when the person is convicted of a serious traffic violation involving a noncommercial motor vehicle, if the conviction for the offense resulted in the revocation, cancellation, or suspension of the driver's license, and the offense occurred within three years of a separate offense of a serious traffic violation that resulted in a conviction.

(c) This section shall become operative on September 20, 2005.

SEC. 21. Section 15308 of the Vehicle Code is amended to read:

15308. (a) A driver may not operate a commercial motor vehicle for a period of 120 days if the person is convicted of a serious traffic violation involving a commercial motor vehicle and the offense occurred within three years of two or more separate offenses of serious traffic violations that resulted in convictions.

(b) A driver may not operate a commercial motor vehicle for a period of 120 days when the person is convicted of a serious traffic violation involving a noncommercial motor vehicle, if the conviction for the offense resulted in the revocation, cancellation, or suspension of the driver's license, and the offense occurred within three years of two or

more separate offenses of serious traffic violations that resulted in convictions.

(c) This section shall become operative on September 20, 2005.

SEC. 22. Section 15311 of the Vehicle Code is amended to read:

15311. (a) A driver may not operate a commercial motor vehicle for a period of 90 days if the person is convicted of a first violation of an out-of-service order under subdivision (b) of Section 2800.

(b) A driver may not operate a commercial motor vehicle for a period of 180 days if the person is convicted of violating an out-of-service order under subdivision (b) of Section 2800 while transporting hazardous materials required to be placarded or while operating a vehicle designed to transport 16 or more passengers, including the driver.

(c) A driver may not operate a commercial motor vehicle for a period of one year if the person is convicted of a second violation of an out-of-service order under subdivision (b) of Section 2800 during any 10-year period, arising from separate incidents.

(d) A driver may not operate a commercial motor vehicle for a period of three years if the person is convicted of a second violation of an out-of-service order under subdivision (b) of Section 2800 while transporting hazardous materials that are required to be placarded or while operating a vehicle designed to transport 16 or more passengers, including the driver.

(e) In addition to the disqualification period required in subdivision (a), (b), (c), or (d), a driver who is convicted of violating an out-of-service order under subdivision (b) of Section 2800 is subject to a civil penalty of not less than one thousand one hundred dollars ($1,100) nor more than two thousand seven hundred fifty dollars ($2,750).

(f) A driver may not operate a commercial motor vehicle for a period of three years if the person is convicted of a third or subsequent violation of an out-of-service order under subdivision (b) of Section 2800 during any 10-year period, arising from separate incidents.

(g) This section shall become operative on September 20, 2005.

SEC. 23. Section 15311.1 is added to the Vehicle Code, to read:

15311.1. (a) An employer that knowingly allows or requires an employee to operate a commercial motor vehicle in violation of an out-of-service order is, upon conviction, subject to a civil penalty of not less than two thousand seven hundred fifty dollars ($2,750) nor more than eleven thousand dollars ($11,000).

(b) This section shall become operative on September 20, 2005.

SEC. 24. Section 15312 of the Vehicle Code is amended to read:

15312. (a) A driver may not operate a commercial motor vehicle for the following periods:

(1) Not less than 60 days if that person is convicted of a violation of subdivision (a) of Section 2800, or Section 21462, 22451, or 22452, or

subdivision (c) of Section 22526, involving a commercial motor vehicle and the violation occurred at a railroad-highway crossing.

(2) Not less than 120 days if that person is convicted of a violation of subdivision (a) of Section 2800, or Section 21462, 22451, or 22452, or subdivision (c) of Section 22526, involving a commercial motor vehicle, and that violation occurred at a railroad-highway crossing, during any three-year period of a separate, prior offense of a railroad-highway grade crossing violation, that resulted in a conviction.

(3) Not less than one year if that person is convicted of a violation of subdivision (a) of Section 2800, or Section 21462, 22451, or 22452, or subdivision (c) of Section 22526, involving a commercial motor vehicle, and that violation occurred at a railroad-highway crossing, at a railroad-highway grade crossing, during any three-year period of two or more prior offenses of a railroad-highway grade crossing violation, that resulted in convictions.

(b) This section shall become operative on September 20, 2005.

SEC. 25. Section 15312.1 is added to the Vehicle Code, to read:

15312.1. (a) An employer that knowingly allows or requires an employee to operate a commercial motor vehicle in violation of a federal, state, or local law or regulation pertaining to railroad crossings is, upon conviction, subject to a civil penalty of not more than ten thousand dollars ($10,000).

(b) This section shall become operative on September 20, 2005.

SEC. 26. Section 15325 is added to the Vehicle Code, to read:

15325. (a) Pursuant to subpart D of Part 383 of Title 49 of the Code of Federal Regulations, a driver whose driving is determined to constitute an imminent hazard is disqualified from operating a commercial motor vehicle for the period specified by the Federal Motor Carrier Safety Administration.

(b) The disqualification action shall be made part of the driver's record.

(c) A driver who is simultaneously disqualified under this section and any other state law or regulation, shall serve those disqualification periods concurrently.

(d) This section shall become operative on September 20, 2005.

SEC. 27. Section 16073 of the Vehicle Code is amended to read:

16073. (a) The privilege of a person employed for the purpose of driving a motor vehicle for compensation whose occupation requires the use of a motor vehicle in the course of his or her employment to drive a motor vehicle not registered in his or her name and in the course of that person's employment may not be suspended under this chapter even though his or her privilege to drive is otherwise suspended under this chapter.

(b) Subdivision (a) does not apply to a commercial driver's licenseholder. A commercial driver's licenseholder whose driving privilege is otherwise suspended under this chapter may not operate a commercial motor vehicle.

(c) This section shall become operative on September 20, 2005.

SEC. 28. Section 16431 of the Vehicle Code is amended to read:

16431. (a) Proof of financial responsibility may be given by the written certificate or certificates of any insurance carrier duly authorized to do business within the state, that it has issued to or for the benefit of the person named therein a motor vehicle liability policy as defined in Section 16450, an automobile liability policy as defined in Section 16054, or any other liability policy issued for vehicles with less than four wheels that meets the requirements of Section 16056, which, at the date of the certificate or certificates, is in full force and effect. Except as provided in subdivision (b), the certificate or certificates issued under any liability policy set forth in this section shall be accepted by the department and satisfy the requirements of proof of financial responsibility of this chapter. Nothing in this chapter requires that an insurance carrier certify that there is coverage broader than that provided by the actual policy issued by the carrier.

(b) The department shall require that a person whose driver's license has been revoked, suspended, or restricted under Section 13350, 13351, 13352, 13353, 13353.2, 13353.3, 13353.7, or 16370, provide, as proof of financial responsibility, a certificate or certificates that covers all motor vehicles registered to the person before reinstatement of his or her driver's license.

(c) Subdivision (b) does not apply to vehicles in storage if the current license plates and registration cards are surrendered to the department in Sacramento.

(d) (1) A resident of another state may provide proof of financial responsibility when required to do so under this code from a company authorized to do business in that person's state of residence, if that proof is satisfactory to the department, covers the operation of a vehicle in this state, and meets the minimum coverage limit requirements specified in Section 16056.

(2) If the person specified in paragraph (1) becomes a resident of this state during the period that the person is required to maintain proof of financial responsibility with the department, the department may not issue or return a driver's license to that person until the person files a written certificate or certificates, as authorized under subdivision (a), that meets the minimum coverage limit requirements specified in Section 16056 and covers the period during which the person is required to maintain proof of financial responsibility.

(e) This section shall become operative on September 20, 2005.

SEC. 29. Section 22406.1 of the Vehicle Code is amended to read:

22406.1. (a) A person who operates a commercial motor vehicle, as defined in subdivision (b) of Section 15210, upon a highway at a speed exceeding a posted speed limit established under this code by 15 miles per hour or more, is guilty of a misdemeanor.

(b) A person who holds a commercial driver's license, as defined in subdivision (a) of Section 15210, and operates a noncommerical motor vehicle upon a highway at a speed exceeding a posted speed limit established under this code by 15 miles per hour or more, is guilty of an infraction.

(c) A violation of either subdivision (a) or (b) is a ''serious traffic violation,'' as defined in subdivision (p) of Section 15210, and is subject to the sanctions provided under Section 15306 or 15308, in addition to any other penalty provided by law.

(d) This section shall become operative on September 20, 2005.

SEC. 30. Section 41501 of the Vehicle Code is amended to read:

41501. (a) The court may order a continuance of a proceeding against a person, who receives a notice to appear in court for a violation of any statute relating to the safe operation of a vehicle, in consideration for attendance at a licensed school for traffic violators, a licensed driving school, or any other court-approved program of driving instruction, and, after that attendance and pursuant to Section 1803.5 or 42005, the court may dismiss the complaint under the following conditions:

(1) If the offense is alleged to have been committed within 12 months of another offense that was dismissed under this section, the court may order the continuance and, after the attendance, dismiss the complaint. The court may order attendance at a licensed school for traffic violators that offers a program of at least 12 hours of instruction.

(2) If the offense is not alleged to have occurred within 18 months of another offense that was dismissed under this section, the court may order the continuance and, after the attendance, dismiss the complaint if the attendance is at any of the types of schools or programs that the court directed pursuant to Section 42005 at the time of ordering the continuance.

(b) This section shall become operative on September 20, 2005.

SEC. 30.3. Section 41501 of the Vehicle Code is amended to read:

41501. (a) The court may order a continuance of a proceeding against a person who receives a notice to appear in court for a violation of a statute relating to the safe operation of a vehicle, in consideration for completion of a program of traffic safety instruction at a school for traffic violators licensed by the department or a licensed driving school, and, after that completion, the court may dismiss the complaint under the following conditions:

(1) If the offense is alleged to have been committed within 12 months of another offense that was dismissed under this section, the court may order the continuance and, after the completion of a program of traffic safety instruction, dismiss the complaint. The court may order the completion of a program or traffic safety instruction at a licensed school for traffic violators that offers a program of at least 12 hours of instruction.

(2) If the offense is not alleged to have occurred within 18 months of another offense that was dismissed under this section, the court may order the continuance and, after the completion of the program, dismiss the complaint if the completion of the program was at any of the types of schools or programs that the court directed pursuant to Section 42005 at the time of ordering the continuance.

(b) 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. 30.5. Section 41501 is added to the Vehicle Code, to read:

41501. (a) The court may order a continuance of a proceeding against a person, who receives a notice to appear in court for a violation of a statute relating to the safe operation of a vehicle, in consideration for completion of a program of traffic safety instruction at a school for traffic violators licensed by the department or a licensed driving school, and, after that completion and pursuant to Section 1803.5 or 42005, the court may dismiss the complaint under the following conditions:

(1) If the offense is alleged to have been committed within 12 months of another offense that was dismissed under this section, the court may order the continuance and, after the completion of a program of traffic safety instruction, dismiss the complaint. The court may order the completion of a program of traffic safety instruction at a licensed school for traffic violators that offers a program of at least 12 hours of instruction.

(2) If the offense is not alleged to have occurred within 18 months of another offense that was dismissed under this section, the court may order the continuance and, after the completion of the program, dismiss the complaint if the completion of the program was at any of the types of schools or programs that the court directed pursuant to Section 42005 at the time of ordering the continuance.

(b) This section shall become operative on September 20, 2005.

SEC. 31. Section 42005 of the Vehicle Code is amended to read:

42005. (a) The court may order or permit a person convicted of a traffic violation to attend a traffic violator school licensed pursuant to Chapter 1.5 (commencing with Section 11200) of Division 5.

(b) In lieu of adjudicating a traffic offense committed by a person who holds a noncommercial class C, class M1, or class M2 driver's license, and with the consent of the defendant, the court may order the person to attend a licensed traffic violator school, a licensed driving school, or any other court-approved program or driving instruction.

(c) Pursuant to Title 49 of the Code of Federal Regulations, the court may not order or permit a person who holds a class A, class B, or commercial class C driver's license to complete a licensed traffic violator school, a licensed driving school, or any other court-approved program of driving instruction in lieu of adjudicating any traffic offense committed by the holder of a class A, class B, or commercial class C driver's license.

(d) The court may not order or permit a person, regardless of the driver's license class, to complete a licensed traffic violator school, a licensed driving school, or any other court-approved program of driving instruction in lieu of adjudicating an offense if that offense had occurred in a commercial motor vehicle, as defined in subdivision (b) of Section 15210.

(e) Except as otherwise provided in subdivision (f), a person so ordered may choose the traffic violator school the person will attend. The court shall make available to each person subject to that order the current list of traffic violator schools published by the department pursuant to Section 11205.

(f) In those counties where, prior to January 1, 1985, one or more individual courts, or the county acting on behalf of one or more individual courts, contracted for the provision of traffic safety instructional services to traffic violators referred by the court pursuant to a pretrial diversion program, the courts may restrict referrals under this section to those schools for traffic violators or licensed driving schools that are under contract with the court or with the county to provide traffic safety instructional services for persons referred pursuant to subdivision (a).

(g) A county described in Section 28023 of the Government Code may continue to provide the program authorized by this section in accordance with the provisions of current and future contracts as may be amended and approved by the individual courts within that county and the county shall be exempt from state regulations relative to maximum classroom attendance.

(h) Notwithstanding subdivisions (f) and (g), a court in the counties described in those subdivisions shall comply with the prohibitions set forth in subdivisions (c) and (d).

(i) A person who willfully fails to comply with a court order to attend traffic violator school is guilty of a misdemeanor.

(j) This section shall become operative on September 20, 2005.

SEC. 31.3. Section 42005 of the Vehicle Code is amended to read:

42005. (a) The court may order any person convicted of a traffic violation to complete a program of traffic safety instruction at a traffic violator school licensed pursuant to Chapter 1.5 (commencing with Section 11200) of Division 5.

(b) In lieu of adjudicating a traffic offense, and with the consent of the defendant, or after conviction of a traffic offense, the court may order any person issued a notice to appear for a traffic violation to complete a program of traffic safety instruction at a traffic violator school licensed pursuant to Chapter 1.5 (commencing with Section 11200) of Division 5.

(c) Except as otherwise provided in subdivision (d), any person so ordered may choose the traffic violator school the person will attend. The court shall provide to each person subject to that order a complete copy of both the current classroom referral list and the current home study referral list of traffic violator schools published by the department pursuant to Section 11205.

(d) In those counties where, prior to January 1, 1985, one or more individual courts, or the county acting on behalf of one or more individual courts, contracted for the provision of traffic safety instructional services to traffic violators referred by the court pursuant to a pretrial diversion program, the courts may restrict referrals under this section to those schools for traffic violators or licensed driving schools which are under contract with the court or with the county to provide traffic safety instructional services for persons referred pursuant to subdivision (a).

(e) A county described in Section 28023 of the Government Code may continue to provide the program authorized by this section in accordance with the provisions of current and future contracts as may be amended and approved by the individual courts within that county and the county shall be exempt from state regulations relative to maximum classroom attendance.

(f) Notwithstanding subdivision (b), a court may not order a person to complete a program of traffic safety instruction at a traffic violator school in lieu of adjudicating an offense if the person was issued a notice to appear for a serious traffic violation, as defined in subdivision (i) of Section 15210, that occurred in a commercial motor vehicle, as defined in subdivision (b) of Section 15210.

(g) Any person who willfully fails to comply with a court order to attend traffic violator school is guilty of a misdemeanor.

(h) 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. 31.5. Section 42005 is added to the Vehicle Code, to read:

42005. (a) The court may order or permit a person convicted of a traffic violation to complete a program of traffic safety instruction at a traffic violator school licensed pursuant to Chapter 1.5 (commencing with Section 11200) of Division 5.

(b) In lieu of adjudicating a traffic offense committed by a person who holds a noncommercial class C, class M1, or class M2 driver's license, and with the consent of the defendant, the court may order the person to complete a program of traffic safety instruction at a traffic violator school licensed pursuant to Chapter 1.5 (commencing with Section 11200) of Division 5, a licensed driving school, or any other court-approved program of driving instruction.

(c) Pursuant to Title 49 of the Code of Federal Regulations, the court may not order or permit a person who holds a class A, class B, or commercial class C driver's license to complete a traffic violator school licensed pursuant to Chapter 1.5 (commencing with Section 11200) of Division 5, a licensed driving school, or any other court-approved program of driving instruction in lieu of adjudicating any traffic offense committed by the holder of a class A, class B, or commercial class C driver's license.

(d) The court may not order or permit a person, regardless of the driver's license class, to complete a traffic violator school licensed pursuant to Chapter 1.5 (commencing with Section 11200) of Division 5, a licensed driving school, or any other court-approved program of driving instruction in lieu of adjudicating an offense if that offense had occurred in a commercial motor vehicle, as defined in subdivision (b) of Section 15210.

(e) Except as otherwise provided in subdivision (f), a person so ordered may choose the traffic violator school the person will attend. The court shall provide to each person subject to that order with a complete copy of both the current classroom referral list and the current home study referral list of traffic violator schools published by the department pursuant to Section 11205.

(f) In those counties where, prior to January 1, 1985, one or more individual courts, or the county acting on behalf of one or more individual courts, contracted for the provision of traffic safety instructional services to traffic violators referred by the court pursuant to a pretrial diversion program, the courts may restrict referrals under this section to those schools for traffic violators or licensed driving schools that are under contract with the court or with the county to provide traffic safety instructional services for persons referred pursuant to subdivision (a).

(g) A county described in Section 28023 of the Government Code may continue to provide the program authorized by this section in

accordance with the provisions of current and future contracts as may be amended and approved by the individual courts within that county and the county shall be exempt from state regulations relative to maximum classroom attendance.

(h) Notwithstanding subdivision (b), a court may not order a person to complete a program of traffic safety instruction at a traffic violator school in lieu of adjudicating an offense if the person was issued a notice to appear for a serious traffic violation, as defined in subdivision (i) of Section 15210, that occurred in a commercial motor vehicle, as defined in subdivision (b) of Section 15210.

(i) Notwithstanding subdivisions (f) and (g), a court in the counties described in those subdivisions shall comply with the prohibitions set forth in subdivisions (c) and (d).

(j) A person who willfully fails to comply with a court order to attend traffic violator school is guilty of a misdemeanor.

(k) This section shall become operative on September 20, 2004.

SEC. 32. Sections 1.3 and 1.5 of this bill incorporate amendments to Section 1803.5 of the Vehicle Code proposed by both this bill and AB 2377. Sections 1.3 and 1.5 shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2005, (2) each bill amends Section 1803.5 of the Vehicle Code, and (3) this bill is enacted after AB 2377, in which case Section 1.2 of this bill shall not become operative.

SEC. 33. Section 6.3 and 6.5 of this bill incorporate amendments to Section 12804.9 of the Vehicle Code proposed by both this bill and AB 1878. Sections 6.3 and 6.5 shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2005, (2) each bill amends Section 12804.9 of the Vehicle Code, and (3) this bill is enacted after AB 1878, in which case Section 6 of this bill shall not become operative.

SEC. 34. (a) Sections 7.1 and 7.2 of this bill incorporate amendments to Section 13353 of the Vehicle Code proposed by both this bill and SB 1694. Sections 7.1 and 7.2 shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2005, (2) each bill amends Section 13353 of the Vehicle Code, (3) SB 1697 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1694, in which case Sections 7, 7.4, and 7.5 of this bill shall not become operative.

(b) Section 7.4 of this bill incorporates amendments to Section 13353 of the Vehicle Code proposed by this bill and SB 1697. Section 7.4 shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2005, (2) each bill amends Section 13353 of the Vehicle Code, (3) SB 1694 is not enacted or as enacted does not amend

that section, and (4) this bill is enacted after SB 1697, in which case Sections 7, 7.1, 7.2, and 7.5 of this bill shall not become operative.

(c) Sections 7.1 and 7.5 of this bill incorporate amendments to Section 13353 of the Vehicle Code proposed by this bill, SB 1694, and SB 1697. Sections 7.1 and 7.5 shall only become operative if (1) all three bills are enacted and become effective January 1, 2005, (2) all three bills amend Section 13353 of the Vehicle Code, and (3) this bill is enacted after SB 1694 and SB 1697, in which case Sections 7, 7.2, and 7.4 shall not become operative.

SEC. 35. (a) Sections 10.1 and 10.2 of this bill incorporate amendments to Section 13353.7 of the Vehicle Code proposed by this bill and SB 1694. Sections 10.1 and 10.2 shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2005, (2) each bill amends Section 13353.7 of the Vehicle Code, (3) SB 1697 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1694, in which case Sections 10, 10.4, and 10.5 of this bill shall not become operative.

(b) Section 10.4 of this bill incorporates amendments to Section 13353.7 of the Vehicle Code proposed by this bill and SB 1697. Section 10.4 shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2005, (2) each bill amends Section 13353.7 of the Vehicle Code, (3) SB 1694 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1697, in which case Sections 10, 10.1, 10.2, and 10.5 shall not become operative.

(c) Sections 10.1 and 10.5 of this bill incorporate amendments to Section 13353.7 of the Vehicle Code proposed by this bill, SB 1694, and SB 1697. Sections 10.1 and 10.5 shall only become operative if (1) all three bills are enacted and become effective January 1, 2005, (2) all three bills amend Section 13353.7 of the Vehicle Code, and (3) this bill is enacted after SB 1694 and SB 1697, in which case Sections 10, 10.2, and 10.5 shall not become operative.

SEC. 36. Sections 12.3 and 12.5 of this bill incorporate amendments to Section 13369 of the Vehicle Code proposed by both this bill and AB 2040. Sections 12.3 and 12.5 of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2005, (2) each bill amends Section 13369 of the Vehicle Code, and (3) this bill is enacted after AB 2040, in which case Section 12 of this bill shall not become operative.

SEC. 37. Sections 13.3 and 13.5 of this bill incorporate amendments to Section 14601.5 of the Vehicle Code proposed by both this bill and AB 2666. Sections 13.3 and 13.5 of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2005, (2) each bill amends Section 14601.5 of the Vehicle Code, and

(3) this bill is enacted after AB 2666, in which case Section 13 of this bill shall not become operative.

SEC. 38. Sections 30.3 and 30.5 of this bill incorporate amendments to Section 41501 of the Vehicle Code proposed by both this bill and AB 2377. Sections 30.3 and 30.5 of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2005, (2) each bill amends Section 41501 of the Vehicle Code, and (3) this bill is enacted after AB 2377, in which case Section 30 of this bill shall not become operative.

SEC. 39. Sections 31.3 and 31.5 of this bill incorporate amendments to Section 42005 of the Vehicle Code proposed by both this bill and AB 2377. Sections 31.3 and 31.5 of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2005, (2) each bill amends Section 42005 of the Vehicle Code, and (3) this bill is enacted after AB 2377, in which case Section 31 of this bill shall not become operative.

SEC. 40. 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. 41. (a) The sum of seven hundred fifty-three thousand eight hundred ninety-two dollars ($753,892) is hereby appropriated from the Motor Vehicle Account in the State Transportation Fund to the Department of Motor Vehicles for purposes of implementing this act.

(b) This section shall become operative on September 20, 2005.

CHAPTER 953

An act to amend Sections 7500, 7503, 7510, 7511, and 7515 of, and to repeal Section 7555 of the Penal Code, relating to prisoners, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 2004.]

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

SECTION 1. Section 7500 of the Penal Code is amended to read:

7500. The Legislature finds and declares all of the following:

(a) The public peace, health, and safety is endangered by the spread of the human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS) within state and local correctional institutions.

(b) The spread of AIDS within prison and jail populations presents a grave danger to inmates within those populations, law enforcement personnel, and other persons in contact with a prisoner infected with the AIDS virus, both during and after the prisoner's confinement. Law enforcement personnel and prisoners are particularly vulnerable to this danger, due to the high number of assaults, violent acts, and transmissions of bodily fluids that occur within correctional institutions.

(c) HIV has the potential of spreading more rapidly within the closed society of correctional institutions than outside these institutions. This major public health problem is compounded by the further potential of rapid spread of communicable disease outside correctional institutions, through contacts of an infected prisoner who is not treated and monitored upon his or her release, or by law enforcement employees who are unknowingly infected.

(d) New diseases of epidemic proportions such as AIDS may suddenly and tragically infect large numbers of people. This title primarily addresses a current problem of this nature, the spread of HIV among those in correctional institutions and among the people of California.

(e) HIV and AIDS pose a major threat to the public health and safety of those governmental employees and others whose responsibilities bring them into direct contact with persons afflicted with those illnesses, and the protection of the health and safety of these personnel is of equal importance to the people of the State of California as the protection of the health of those afflicted with the diseases who are held in custodial situations.

(f) Testing described in this title of individuals housed within state and local correctional facilities for evidence of infection by HIV would help to provide a level of information necessary for effective disease control within these institutions and would help to preserve the health of public employees, inmates, and persons in custody, as well as that of the public at large. This testing is not intended to be, and shall not be construed as, a prototypical method of disease control for the public at large.

SEC. 2. Section 7503 of the Penal Code is amended to read:

7503. The Department of Corrections, the Department of the Youth Authority, and county health officers shall adopt guidelines permitting a chief medical officer to delegate his or her medical responsibilities under this title to other qualified physicians and surgeons, and his or her nonmedical responsibilities to other qualified persons, as appropriate.

The chief medical officer shall not, however, delegate the duty to determine whether mandatory testing is required as provided for in Chapter 2 (commencing with Section 7510) except to another qualified physician designated to act as chief medical officer in the chief medical officer's absence.

SEC. 3. Section 7510 of the Penal Code is amended to read:

7510. (a) A law enforcement employee who believes that he or she came into contact with bodily fluids of either an inmate of a correctional institution, a person not in a correctional institution who has been arrested or taken into custody whether or not the person has been charged with a crime, including a person detained for or charged with an offense for which he or she may be made a ward of the court under Section 602 of the Welfare and Institutions Code, or a person on probation or parole due to conviction of a crime, shall report the incident through the completion of a form provided by the State Department of Health Services. The form shall be directed to the chief medical officer, as defined in subdivision (c), who serves the applicable law enforcement agency. Utilizing this form the law enforcement employee may request an HIV test of the person who is the subject of the report. The forms may be combined with regular incident reports or other forms used by the correctional institution or law enforcement agency, however the processing of a form by the chief medical officer containing a request for HIV testing of the subject person shall not be delayed by the processing of other reports or forms.

(b) The report required by subdivision (a) shall be submitted by the end of the law enforcement employee's shift during which the incident occurred, or if not practicable, as soon as possible, but no longer than two days after the incident, except that the chief medical officer may waive this filing period requirement if he or she finds that good cause exists. The report shall include names of witnesses to the incident, names of persons involved in the incident, and if feasible, any written statements from these parties. The law enforcement employee shall assist in the investigation of the incident, as requested by the chief medical officer.

(c) For purposes of this section and Section 7511, ''chief medical officer'' means:

(1) In the case of a report filed by a staff member of a state prison, the chief medical officer of that facility.

(2) In the case of a parole officer filing a report, the chief medical officer of the nearest state prison.

(3) In the case of a report filed by an employee of the Department of the Youth Authority, the chief medical officer of the facility.

(4) In the case of a report filed against a subject who is an inmate of a city or county jail or a county- or city-operated juvenile facility, or who has been arrested or taken into custody whether or not the person has

been charged with a crime, but who is not in a correctional facility, including a person detained for or charged with an offense for which he or she may be made a ward of the court under Section 602 of the Welfare and Institutions Code, the county health officer of the county in which the individual is jailed or charged with the crime.

(5) In the case of a report filed by a probation officer, the county health officer of the county in which the probation officer is employed.

(6) In any instance where the chief medical officer, as determined pursuant to this subdivision, is not a physician and surgeon, the chief medical officer shall designate a physician and surgeon to perform his or her duties under this title.

SEC. 4. Section 7511 of the Penal Code is amended to read:

7511. (a) The chief medical officer shall, regardless of whether a report filed pursuant to Section 7510 contains a request for HIV testing, decide whether or not to require HIV testing of the inmate or other person who is the subject of the report filed pursuant to Section 7510, within 24 hours of receipt of the report. If the chief medical officer decides to require HIV testing, he or she shall specify in his or her decision the circumstances, if any, under which followup testing will also be required.

(b) The chief medical officer shall order an HIV test only if he or she finds that, considering all of the facts and circumstances, there is a significant risk that HIV was transmitted. In making this decision, the chief medical officer shall take the following factors into consideration:

(1) Whether an exchange of bodily fluids occurred which could have resulted in a significant risk of AIDS infection, based on the latest written guidelines and standards established by the federal Centers for Disease Control and the State Department of Health Services.

(2) Whether the person exhibits medical conditions or clinical findings consistent with HIV infection.

(3) Whether the health of the institution staff or inmates may have been endangered as to HIV infection resulting from the reported incident.

(c) Prior to reaching a decision, the chief medical officer shall receive written or oral testimony from the law enforcement employee filing the report, from the subject of the report, and from witnesses to the incident, as he or she deems necessary for a complete investigation. The decision shall be in writing and shall state the reasons for the decision. A copy shall be provided by the chief medical officer to the law enforcement employee who filed the report and to the subject of the report, and where the subject is a minor, to the parents or guardian of the minor, unless the parent or guardian of the minor cannot be located.

SEC. 5. Section 7515 of the Penal Code is amended to read:

7515. (a) A decision of the chief medical officer made pursuant to Section 7511, 7512, or 7516 may be appealed, within three calendar days of receipt of the decision, to a three-person panel, either by the person required to be tested, his or her parent or guardian when the subject is a minor, the law enforcement employee filing a report pursuant to either Section 7510 or 7516, or the person requesting testing pursuant to Section 7512, whichever is applicable, or the chief medical officer, upon his or her own motion. If no request for appeal is filed under this subdivision, the chief medical officer's decision shall be final.

(b) Depending upon which entity has jurisdiction over the person requesting or appealing a test, the Department of Corrections, the Department of the Youth Authority, the county, the city, or the county and city shall convene the appeal panel and shall ensure that the appeal is heard within seven calendar days.

(c) A panel required pursuant to subdivision (a) or (b) shall consist of three members, as follows:

(1) The chief medical officer making the original decision.

(2) A physician and surgeon who has knowledge in the diagnosis, treatment, and transmission of HIV, selected by the Department of Corrections, the Department of the Youth Authority, the county, the city, or the county and city. The physician and surgeon appointed pursuant to this paragraph shall preside at the hearing and serve as chairperson.

(3) A physician and surgeon not on the staff of, or under contract with, a state, county, city, or county and city correctional institution or with an employer of a law enforcement employee as defined in subdivision (b) of Section 7502, and who has knowledge of the diagnosis, treatment, and transmission of HIV. The physician and surgeon appointed pursuant to this paragraph shall be selected by the State Department of Health Services from a list of persons to be compiled by that department. The State Department of Health Services shall adopt standards for selecting persons for the list required by this paragraph, as well as for their reimbursement, and shall, to the extent possible, utilize its normal process for selecting consultants in compiling this list.

The Legislature finds and declares that the presence of a physician and surgeon on the panel who is selected by the State Department of Health Services enhances the objectivity of the panel, and it is the intent of the Legislature that the State Department of Health Services make every attempt to comply with this subdivision.

(d) The Department of Corrections, the county, the city, or the county and city shall notify the Office of AIDS in the State Department of Health Services when a panel must be convened under subdivision (a). Within two calendar days of the notification, a physician and surgeon appointed under paragraph (3) of subdivision (c) shall reach agreement

with the Department of Corrections, the county, the city, or the county and city on a date for the hearing that complies with subdivision (b).

(e) If the Office of AIDS in the State Department of Health Services fails to comply with subdivision (d) or the physician and surgeon appointed under paragraph (3) of subdivision (c) fails to attend the scheduled hearing, the Department of Corrections, the county, the city, or the county and city shall appoint a physician or surgeon who has knowledge of the diagnosis, treatment, and transmission of HIV to serve on the appeals panel to replace the physician and surgeon required under paragraph (3) of subdivision (c). The Department of Corrections, the county, the city, or the county and city shall have standards for selecting persons under this subdivision and for their reimbursement.

The Department of Corrections, the Department of the Youth Authority, the county, the city, or the county and city shall, whenever feasible, create, and utilize ongoing panels to hear appeals under this section. The membership of the panel shall meet the requirements of paragraphs (1), (2), and (3) of subdivision (c).

No panel shall be created pursuant to this paragraph by a county, city, or county and city correctional institution except with the prior approval of the local health officer.

(f) A hearing conducted pursuant to this section shall be closed, except that each of the following persons shall have the right to attend the hearing, speak on the issues presented at the hearing, and call witnesses to testify at the hearing:

(1) The chief medical officer, who may also bring staff essential to the hearing, as well as the other two members of the panel.

(2) The subject of the chief medical officer's decision, except that a subject who is a minor may attend only with the consent of his or her parent or guardian and, if the subject is a minor, his or her parent or guardian.

(3) The law enforcement employee filing the report pursuant to Section 7510, or the person requesting HIV testing pursuant to Section 7512, whichever is applicable and, if the person is a minor, his or her parent or guardian.

(g) The subject of the test, or the person requesting the test pursuant to Section 7512, or who filed the report pursuant to Section 7510, whichever is applicable, may appoint a representative to attend the hearing in order to assist him or her.

(h) When a hearing is sought pursuant to this section, or filed by a law enforcement employee pursuant to a request made under Section 7510, the decision shall be rendered within two days of the hearing. A unanimous vote of the panel shall be necessary in order to require that the subject of the hearing undergo HIV testing.

The criteria specified in Section 7511 for use by the chief medical officer shall also be utilized by the panel in making its decision.

The decision shall be in writing, stating reasons for the decision, and shall be signed by the members. A copy shall be provided by the chief medical officer to the person requesting the test, or filing the report, whichever is applicable, to the subject of the test, and, when the subject is in a correctional institution, to the superintendent of the institution, except that, when the subject of the test or the person upon whose behalf the request for the test was made is a minor, copies shall also be provided to the parent or guardian of the person, unless the parent or guardian cannot be located.

SEC. 6. Section 7555 of the Penal Code is repealed.

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

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:

Law enforcement employees are undergoing unnecessary stress and medical treatment in cases in which there has been an exposure to HIV but no infection because of the inability to test prisoners for HIV in a timely manner.

CHAPTER 954

An act relating to redevelopment.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 2004.]

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

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

(1) A number of historic, educational, and cultural resources of regional and statewide significance are located within the Hoover

Redevelopment Project of the City of Los Angeles, including the 160-acre Exposition Park.

(2) This park is home to state and county museums, including the Natural History Museum of Los Angeles County, the California African American Museum, and the California Science Center, the Exposition Park Rose Garden, the Exposition Park Intergenerational Community Center, the Science Center School/Center for Science Learning, the Sports Arena, and the Los Angeles Memorial Coliseum. The University of Southern California and the Shrine Auditorium are also located within the boundaries of the project area. A significant portion of the expanded project area of the Hoover Redevelopment Project is owned by the state and produces no property tax revenue for any taxing entity. This measure will provide a unique opportunity for revitalization and investment in the area without adverse fiscal impact to the state.

(3) The City Council of the City of Los Angeles has determined that the preservation and feasible reuse of the historic Los Angeles Memorial Coliseum and adjacent Exposition Park facilities and the connection of this area to Los Angeles' Greater Downtown along the Figueroa Arts, Sports and Entertainment Corridor are essential toward the elimination of blight and the improvement of the economic health of the neighborhoods which surround and are located within the Hoover Redevelopment Project.

(4) In 1966, 1971, 1983, and 1989, the City Council of the City of Los Angeles determined that the Hoover Project Redevelopment Area was a blighted area based upon substantial evidence and documentation. In November 2000, pursuant to Section 33490 of the Health and Safety Code, significant remaining blight was again documented in the Hoover Redevelopment Project Area's Implementation Plan.

(5) The Legislature intends to permit the financing of this preservation and reuse to feasibly occur by providing necessary public financing, by creating the means to attract and induce the necessary private investment of capital, and to provide for the protection and enhancement of the Los Angeles Memorial Coliseum and related facilities, utilizing tax-increment revenues.

(b) The City Council of the City of Los Angeles may, by the adoption of one ordinance adopted not later than December 31, 2009, amend the redevelopment plan for the Hoover Redevelopment Project with respect to both the original project area and the expanded project area, to do any or all of the following:

(1) Extend the time limit on the effectiveness of the redevelopment plan specified in subdivision (a) of Section 33333.6 of the Health and Safety Code by not more than 12 years.

(2) Notwithstanding paragraph (3) of subdivision (a) and paragraph (2) of subdivision (g) of Section 33333.4 of the Health and Safety Code,

extend the time limits for commencement of eminent domain proceedings to acquire property within the project area by not more than 12 years.

(3) Increase the limit on the number of dollars of taxes that may be divided and allocated to the agency pursuant to the plan, including any amendments to the plan.

(4) Increase the limit on the amount of the bonded indebtedness that can be outstanding at one time without an amendment of the plan pursuant to Section 33334.1 of the Health and Safety Code.

(5) Rename the project area to reflect the most identifiable assets within the boundaries of the project area, namely Exposition Park and University Park, and make other amendments to the text of the redevelopment plan that are consistent with addressing the unique circumstances and needs described in subdivision (a) and that are appropriate to assure the availability of housing for all economic segments of the community, consistent with the requirements of the California Community Redevelopment Law (Division 24 (commencing with Section 33000) of the Health and Safety Code).

(c) In adopting the ordinance pursuant to this section, neither the City Council of the City of Los Angeles nor the Community Redevelopment Agency of the City of Los Angeles is required to comply with Section 33354.6 or Article 12 (commencing with Section 33450) of Chapter 4 of Part 1 of Division 24 of the Health and Safety Code or any other provision of the Community Redevelopment Law (Division 24 (commencing with Section 33000) of the Health and Safety Code) relating to the amendment of redevelopment plans, including, but not limited to, the requirement to make payments to taxing entities required by paragraph (2) of subdivision (b) of Section 33607.7 of the Health and Safety Code, except for the following requirements:

(1) Payments required by paragraph (1) of subdivision (b) of Section 33607.7 of the Health and Safety Code.

(2) The notice provisions required for amendments to redevelopment plans contained in Section 33452 of the Health and Safety Code.

(3) The requirements of subdivisions (f), (g), and (i) of Section 33333.10 of the Health and Safety Code. For the purposes of compliance with subdivisions (f) and (g) of that section, the following applies:

(A) The references in subdivision (f) of Section 33333.10 of the Health and Safety Code, to ''the amendment pursuant to this section'' or ''pursuant to subdivision (a)'' include the ordinance adopted pursuant to this section.

(B) The references in subdivision (g) of Section 33333.10 of the Health and Safety Code to ''bonds'' means bonds or other indebtedness of the agency.

(C) Except as otherwise expressly provided in this section, all expenditures from the Low and Moderate Income Housing Fund from the project shall comply with the requirements of Sections 33334.2 and 33334.3 of the Health and Safety Code.

(D) Nothing in this section shall alter or modify the applicability of Section 33333.8 of the Health and Safety Code to the amendment authorized to be adopted by ordinance pursuant to this section.

(4) The ordinance authorized by this act shall be subject to referendum pursuant to Section 33378 of the Health and Safety Code, and as prescribed by law for the ordinances of the City Council of the City of Los Angeles.

(5) A preliminary report shall be sent to each affected taxing agency, the Department of Finance, and the Department of Housing and Community Development no later than 30 days prior to holding a public hearing on the proposed amendment. This preliminary report shall contain the information described in paragraphs (1) to (6), inclusive, of subdivision (e) of Section 33333.11 of the Health and Safety Code.

(d) After the limit on the payment of indebtedness and receipt of property taxes that would have taken effect but for the ordinance adopted pursuant to this section, except for funds deposited in the Low and Moderate Income Housing Fund pursuant to Section 33334.2 or 33334.6 of the Health and Safety Code, the agency shall spend tax-increment funds generated by the Memorial Coliseum and Exposition Park portion of the project area only for public infrastructure expenditures, after first complying with the requirements of Section 33445 of the Health and Safety Code, including, without limitation, the requirement that the City Council of the City of Los Angeles shall determine, pursuant to paragraph (3) of subdivision (a) of Section 33445 of the Health and Safety Code, that the payment of funds will assist in the elimination of one or more blighting conditions inside the project area. Except as otherwise limited by paragraph (3) of subdivision (c), the agency may continue to spend funds deposited in the Low and Moderate Income Housing Fund in accordance with the Community Redevelopment Law, Division 24 (commencing with Section 33000) of Part 1 of the Health and Safety Code.

(e) Because of the state's fiscal interest in this project, prior to adopting the ordinance authorized by this act, the City Council of the City of Los Angeles shall submit the proposed ordinance to the California Infrastructure and Economic Development Bank for review and approval. The bank may circulate the proposed ordinance to other state agencies, including, but not limited to, the Department of Finance, the Department of Housing and Community Development, and the Office of Planning and Research, and solicit their comments and recommendations. After considering the comments and

recommendations of other state agencies, the bank shall take one of the following actions:

(1) Approve the proposed ordinance if the bank makes the finding required pursuant to subdivision (g).

(2) Return the proposed ordinance to the city council with specific recommendations for changes that would allow the bank to approve the ordinance.

(f) The bank shall have 30 days from the receipt of the proposed ordinance to act pursuant to subdivision (e). If the bank does not act within 30 days, the proposed ordinance shall be deemed approved.

(g) For bank approval, the proposed ordinance shall demonstrate a reasonable probability that the economic activity proposed to occur within the Hoover Redevelopment Project Area as a result of the proposed ordinance would result in an amount of revenue to the General Fund that is greater than the amount of property tax increment revenues that would be diverted from school entities, taking into consideration all pertinent data, and excluding the portion related to the Educational Revenue Augmentation Fund (ERAF), over the term of the Hoover Redevelopment Project Area. In making this demonstration, the bank shall consider only those General Fund revenues that would occur because of economic activity proposed to occur within the Hoover Redevelopment Project Area as result of the proposed ordinance. The bank shall not consider those General Fund revenues that would have occurred if the proposed ordinance had not been enacted. If an ordinance is not adopted consistent with this section by December 31, 2009, this section shall be repealed on January 1, 2010.

(h) The bank shall not approve the proposed ordinance if it determines that the ordinance would directly or indirectly result in a relocation of a professional sports team from another location in the state to a location within the Hoover Redevelopment Project Area.

SEC. 2. Due to the unique circumstances facing the Hoover Redevelopment Project of the City of Los Angeles, as described in Section 1 of this act, the Legislature hereby finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.